

**LATROBE SPECIALTY METALS COMPANY TERMS
AND CONDITIONS FOR
DESIGN, BUILD AND INSTALL EQUIPMENT
(June 2011)**

Section 1. Definitions.

- (A) "Applicable Environmental Laws" means any and all laws concerning the protection of human health and the environment which include, but will not be limited to, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Federal Water Pollution Control Act, the Clean Air Act, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, and the Safe Drinking Water Act, as they have been or will be amended from time to time, and the regulations implementing such statutes; and any similar state and local laws and ordinances concerning the protection of human health and the environment and the regulations implementing such statutes.
- (B) "Company" means Latrobe Specialty Metals Company or its subsidiary(ies) or affiliate(s) executing the Contract.
- (C) "Contract" means the these Terms and Conditions for Design, Build and Equipment Install Contracts ("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) "Hazardous Substance(s)" means any substance, material, chemical or waste that is or will be listed or defined as hazardous, toxic or dangerous under any Applicable Environmental Law, or any petroleum products, or any substance, material, chemical or waste which is or may become, directly or indirectly, by chemical reaction or otherwise, hazardous, toxic or dangerous to life, health, property or the environment by reason of toxicity, flammability, explosiveness, corrosivity or any other reasons.
- (E) "Premises" means property owned, leased or administered by Company or, if applicable, property which is owned, leased or administered by others, which contains within its boundaries the site where the Work is to be or is being performed, unless provided otherwise in the Contract.
- (F) "Progress Milestones" means those achievements, events or measures of progress of the Work, as defined in the Contract, which are required to be met by Vendor for payments by Company.
- (G) "Vendor" means the individual, corporation or other entity other than Company who is a party to this Contract and responsible for the Work performance.

- (H) "Work" means all equipment, items, parts, materials, labor or other services provided by Vendor as specified in the Contract.

Section 2. Scope and Acceptance.

All Work is 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 Work covered under this Contract, by Vendor. Any acceptance of this Contract is limited to acceptance of the express terms of the offer. 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. Site and Other Examinations -
Observance of Laws.**

- (A) Vendor represents that it has procured a license to do business, if required by law, and has complied with all other legal requirements before submitting a bid for the Work or performing any Work. Vendor and the Work 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.
- (B) Vendor represents that it has carefully examined the drawings and specifications, governmental restrictions, permits and license requirements, and all other laws and rules applicable to the Work. Vendor further represents it has visited the Work site, has made all investigations essential to a full understanding of the difficulties which may be encountered, and has special qualifications for doing the Work.
- (C) Vendor must, before commencing the Work, obtain, at its own expense, all necessary permits (except building permits) and licenses, and must, in the performance of the Work, observe and abide by all applicable laws, regulations, ordinances, governmental restrictions and other rules.

Section 4. Specifications and Drawings.

- (A) Vendor and its subcontractors will furnish all shop drawings, properly identified, required by the specifications. All shop drawings submitted by subcontractors will be first checked by Vendor and corrected before being submitted to Company. Approval of shop drawings by Company

will not relieve Vendor from responsibility for errors or omissions in the shop drawings, and Vendor, notwithstanding such approval, will correct all errors and omissions.

- (B) Vendor must keep a copy of the drawings and specifications at the Premises at all times. If there is any difference between the drawings and the specifications, the specifications will govern, but the matter will be immediately submitted to Company's representative without whose decision said difference will not be resolved by Vendor, except at its own risk and expense.
- (C) All drawings, specifications, shop drawings and related documents, and all copies and all reproductions, whether created by Vendor or Company, relating to the Work:
- (1) are the property of Company and must be delivered to Company upon request, or at the completion of the Work;
 - (2) are provided to Vendor, its subcontractors and material suppliers for the limited purpose of use in completing the Work, and may not be used for any other purpose without the prior written consent of Company;
 - (3) are confidential and, except for the purpose specified above, may not be copied, exhibited, or disclosed to others without prior written consent of Company, and no photographs may be taken of any article fabricated or assembled from the drawings and/or specifications without the prior written consent of Company.

Section 5. Materials and Workmanship.

Where machinery, equipment, or material are referred to in the Contract as equal to any particular standard, Company will decide the question of equality. When required by the Contract, or requested by Company, Vendor will furnish Company with the name of the manufacturer, the performance capabilities, and other pertinent information necessary to properly determine the quality and suitability of any machines, equipment and material to be incorporated in the Work. Material samples will be submitted at Company's request. When the Contract specifies machinery, equipment or material by manufacturer, model, or trade name, no substitution will be made without Company's written approval. Machinery, equipment or material installed in the Work without the approval required by this Section 5 will be deemed to be defective material for purposes of Section 6.

Section 6. Inspections and Tests.

- (A) Company and its representatives will at all times have access to the Work wherever it is being performed, and Vendor will provide proper facilities

for such access and for inspection. When any item of Work is being executed away from the Premises, Vendor will promptly notify Company of the location and the schedule for completion.

- (B) Company will have the right to reject defective materials or workmanship and to require their correction. Rejected workmanship will be satisfactorily corrected, and rejected materials will be immediately removed from the work site, without charge to Company. If Vendor does not correct such defective workmanship within a reasonable time or remove rejected materials immediately, Company may correct such defective workmanship or remove such rejected materials and such expense will be payable by Vendor. Should Company at any time before final acceptance of the entire Work desire to make an examination of any items of Work already completed by removing or tearing out same, Vendor will, upon request, promptly furnish all necessary facilities, labor, and materials for such an examination. If such items of Work are found to be defective in any material respect due to the fault of Vendor or its subcontractors, Vendor will pay all the expenses of such examination and of satisfactory reconstruction. If however, such items of Work are found to meet the requirements of the Contract, Vendor will be reimbursed by Company for removal, examination and replacement, in accordance with Section 9(C).
- (C) Neither the failure of Company to exercise the right of inspection nor the failure to discover defective workmanship or material during such inspection will relieve Vendor of its obligation to provide material and workmanship strictly in accordance with the Contract.
- (D) All laboratory tests required by Company will be made in a laboratory approved by Company. Unless otherwise specified by Company, all tests will be made in accordance with the current standard methods of the American Society for Testing Materials governing the materials tested.

Section 7. Schedule For Completion -- Overtime -- Delays.

- (A) Vendor will not be entitled to any damages or compensation for delays in the commencement, progress, or completion of the Work resulting from any cause whatsoever, except as specifically provided for in this Section 7.
- (B) If a delay is not caused by or contributed to by any act or omission of Vendor or its subcontractors, the time for completion will be extended by Company for a period of time determined by Company to be equivalent to the time of such delay. If Company requires Vendor to work additional time to make up any such delays, Company will pay Vendor for such additional time in

accordance with the provisions of Section 9(C).

If Company directs Vendor to cease the Work at Company's Premises, restrict its labor force, or otherwise delay or suspend the Work at Company's Premises, or if Company causes a delay or suspension of the Work at Company's Premises by its failure to provide for timely completion of work by others, timely delivery of machinery, material, or equipment which Company is required to provide, Company will, if personnel, equipment, and facilities are idled and cannot be productively employed elsewhere, grant an extension of time and reimburse Vendor or its subcontractors accordingly. Vendor will make every reasonable effort to minimize the cost to Company.

- (D) If any such delay is caused by or contributed to by any act or omission of Vendor, no extension of time will be granted by Company, and Company will have the right to charge Vendor for any costs paid by Company to others to eliminate the delay. Company may require Vendor to work overtime at Vendor's expense to make up any time lost as a result of such delay.
- (E) The time of Vendor's performance is of the essence for this Contract. The Work will be completed in accordance with the schedule set forth in the Contract. Vendor must immediately notify Company in writing any time the Work is behind schedule or may not be completed on schedule.
- (F) Any request for extension of time or compensation under this Section 7 must be made in writing by Vendor, immediately upon recognizing the possibility of delay.
- (G) It is understood that others may work in the same area occupied by Vendor. Vendor will fully cooperate in scheduling the Work so that a minimum of interference will occur.

Section 8. Baseline Responsibility.

- (A) Before proceeding with the Work, and from time to time as the Work progresses, Vendor will examine work installed by others which influence the Work and shall promptly notify Company in writing if any condition exists that will prevent Vendor from satisfactorily completing the Work. If Vendor proceeds without such notification and it is then necessary to reconstruct any part of the Work because of such condition, Vendor will reconstruct such part without expense to Company.
- (B) Vendor will establish benchmarks and lines based on adjacent building columns, equipment bases, equipment operating surfaces or other reference monuments. Before proceeding with the Work, these controls will be reviewed with Company's representative. This review will not relieve Vendor from its

responsibility defined in (A) above or elsewhere in the Contract.

Section 9. Changes.

Company, at any time, by a written order, and without notice to any surety, may make changes in the Work, including but not limited to the drawings and the specifications. If such changes affect the cost of the Work or time required for its performance, an equitable adjustment will be made in the Contract price or time for performance or both. However, if specifically requested in writing by Company, Vendor will proceed with the prosecution of the portion of the Work so changed without waiting for an agreement to be reached concerning such adjustment. Any change in the Contract price necessitated by such change will be made in accordance with one or more of the following methods acceptable to Company, and such change will be authorized by a change order document signed by Company and accepted by Vendor:

- (A) by adding or deducting a lump sum (if requested by Company, Vendor will provide a detailed cost breakdown);
- (B) by adding or deducting unit prices;
- (C) by adding with respect to additions to the Work:
 - (1) actual straight time wage and benefit costs of all direct labor employed. The actual straight time wage cost of all direct labor will not include indirect costs for other supervisory, administrative, clerical, office, or other overhead expense whether incurred at the Work site or elsewhere.
 - (2) actual cost of the premium portion of approved overtime labor, including insurance, taxes, benefits, and other contributions required of Vendor;
 - (3) an amount for equipment, fueled, maintained but without operator;
 - (4) actual cost of all materials furnished and expendable tools and supplies consumed directly in the Work;
 - (5) actual cost of any items of Work performed by subcontractors.
 - (6) actual cost of any sales tax paid on materials, tools, and supplies.

Separate records, subject to audit by Company, must be kept for any payments to be made pursuant to Section 9(C). Vendor must submit for Company's approval a list of all wage costs determined pursuant to Section 9(C)(1) and (2) and a list of all equipment and tools with the rental rates to be charged pursuant to Section 9(C)(3). Any claim for adjustment under this Section 9 must be asserted in writing by Vendor within ten (10) days from the date the change was ordered by Company. No claim for adjustment

will be allowed unless the change was specifically ordered in writing by Company.

Section 10. Payments.

(A) Payments for the Work will be made according to Progress Milestones as specified in the Contract as the requirements of the Progress Milestones are met. Progress payments for the Work will be made by Company upon proper application by Vendor during the progress of the Work and according to the terms of payment as specified in the Contract. Vendor's progress billing invoice will include progress payments due for the original scope of work and changes. Unless otherwise expressly set forth in the Contract, the terms of payment are net sixty (60) days after Company's receipt of Vendor's valid invoice. Each "Item for Payment" shown in the original Contract and each change order will be itemized on the invoice. Invoices for cost plus work, whether part of the original Contract or a change as described in Section 9(C), must have subcontractor and/or materialman invoices attached to Vendor's invoice. Other format and support documents for invoices will be determined by Company in advance of the first invoice cycle. 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 Work, 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 will be considered good cause for withholding payment without losing cash discount privileges.

(B) Payments otherwise due may be withheld by Company on account of defective Work not remedied, liens or other claims filed, reasonable evidence indicating probable filing of liens or other claims, failure of Vendor to make payments properly to its subcontractors or for material or labor, reasonable doubt that the Contract can be completed for the balance then unpaid, the failure of Vendor to perform any of its other obligations under the Contract, or to protect Company against any liability arising out of Vendor's failure to pay or discharge taxes or other obligations. If the causes for which payment is withheld are removed, the withheld payments will be made promptly. If the said causes are not removed within a reasonable period after written notice, Company may remove them at Vendor's expense. Company shall have the right, at any time, to setoff and apply against any monetary obligations that Company owes to Vendor or any of its parents, subsidiaries or affiliates, any

obligations that Company or any of its parents, subsidiaries or affiliates may owe to Vendor.

- (C) Payment of the final Progress Milestone payment will be made by Company upon:
- (1) submission of an invoice for satisfactory completion of the requirements of a Progress Milestone as defined in the Contract and in the amount associated with the Progress Milestone;
 - (2) written acceptance of the Work by Company;
 - (3) delivery of all drawings and specifications, if required by Company;
 - (4) delivery of executed full releases of all liens arising out of the Contract or any agreement supplemental to the Contract, or any subcontract made pursuant to or in connection with the performance under the Contract or any agreement supplemental to the Contract, or receipts in full in lieu thereof
 - (5) delivery of an affidavit listing all persons who might otherwise be entitled to file, claim, or maintain a lien of any kind or character, and containing a statement that all of the said persons have been paid in full.

If any person refuses to furnish an actual release or receipt in full, Vendor may furnish a bond satisfactory to Company to indemnify Company against any claim or lien at no cost to Company.

- (D) Acceptance by Vendor of payment of the final Progress Milestone payment pursuant to Section 10(C) will constitute a waiver, release, and discharge of any and all claims and demands of any kind or character which Vendor then has, or can subsequently acquire against Company, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of the Contract, or any agreement supplemental to the Contract. However, payment of the final Progress Milestone payment by Company will not constitute a waiver, release, or discharge of any claims or demands which Company then has, or can subsequently acquire, against Vendor, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of the Contract or any agreement supplemental to the Contract.

Section 11. 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 Work, or substantially similar Work, sold by Vendor to its other customers. If, after execution of this Contract, but prior to payment by the Company for Work purchased hereunder, Vendor (i) sells, or offers to sell, Work, or substantially similar Work, to another customer at a lower price, (ii) offers a reduction in price to any customer already purchasing Work, or substantially similar Work, or (iii) sells, or offers to sell, Work, or substantially similar Work, 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 Work 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 Work to Company on similar commercial terms, but at a lower price, Company may notify, and provide the necessary particulars of such offer to Vendor (excepting price), and Vendor will inform Company whether it will match such offer for Work purchased hereunder. If Vendor does not agree to match such offer, Company may, in its sole discretion, elect to purchase Work from such third party, and any obligation of Company to purchase Work 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 Work from Vendor and Company will be entitled, in its sole discretion, to purchase the same or similar Work from other suppliers. Company expressly reserves the right to disclose the terms of this Contract, including but not limited to price, to third parties.

Section 12. Taxes.

- (A) Vendor will bear and pay all applicable taxes of the United States and any other country, including any political subdivision of same, 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 the 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 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 Work 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 Work invoiced, or allocated portion thereof, was 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 12(C) above, all other taxes, however denominated or measured, imposed upon the price or compensation under this Contract, or upon the Work 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 Work 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.
- (D) 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.
- (E) 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 13. Warranty.

- (A) Vendor warrants that the Work will be performed using reasonable care and skill and will be free from defects in design, engineering, material and workmanship for a period of two (2) years, or such longer period as provided by a manufacturer's warranty or as agreed to by Vendor and Company, from the date of final written acceptance of the completed Work by Company as required for final payment under Section 10. For any breach of the above warranties, Vendor will, immediately after receiving notice from Company, at the option of Company, and at Vendor's own expense and without cost to Company:
- (1) repair the defective Work;
 - (2) replace the defective Work with conforming Work, F.O.B. Company's plant, office or other location of Company where the Work was originally performed; or
 - (3) repay to Company the purchase price of the defective Work.

If Company selects repair or replacement, any defects will be remedied without cost to Company, including but not limited to, the costs of removal, repair and replacement of the defective Work, and reinstallation of new Work. All such defective Work that is so remedied will be similarly warranted as stated above. In addition, Vendor will repair or replace other items of the Work which may have been damaged by such defects or the repairing of the same, all at its own expense and without cost to Company. If Vendor fails to repair or replace any defective Work in a timely manner, Company may do so and Vendor will reimburse Company for actual and reasonable expenses.

- (B) Vendor warrants that any machinery, equipment, or process, the design of which is the responsibility of Vendor, will meet the performance requirements specified in the Contract. Company's inspection, testing, approval, or acceptance of any such machinery, equipment, or process will not relieve Vendor of its obligations under this Section 13(B).
- (C) In the event of a breach by Vendor of its obligations under this Section 13, Company will not be limited to the remedies set forth in this Section 13, but will have all the rights and remedies permitted by the Contract and by law. All warranties and other provisions of this Section 12 will survive inspection or acceptance of and payment for the Work and completion, termination or cancellation of this Contract.

- (D) Company's occupancy of the Work site, or any portion of the Work site, will not constitute acceptance or approval of the Work or any such portion of the Work.

Section 14. Independent Contractor.

- (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.

Section 15. Superintendence.

Vendor must have a competent superintendent, satisfactory to Company, at the Work site at all times during progress of the Work with the authority to act for Vendor.

Section 16. Subcontracts.

Vendor must obtain Company's written permission before subcontracting any portion of the Work. Except for the insurance requirements in Section 21, all subcontracts and orders for the purchase or rental of supplies, materials or equipment, or any other part of the Work, will require that the subcontractor or materialman be bound by and subject to all of the terms and conditions of the Contract. No subcontract or order will relieve Vendor from its obligations to Company, including, but not limited to Vendor's insurance and indemnification obligations. No subcontract or order will bind Company.

Section 17. Environment, Health, Safety and Security.

- (A) 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 Work for Company. Upon request of Company, and at no cost or expense to Company, Vendor shall promptly remove from said premises any person under the control of Vendor who violates any of the aforesaid health, safety and environmental or plant laws, regulations, ordinances or rules or who may cause or threaten to cause a breach of the peace, or who is otherwise objectionable to Company.
- (B) Vendor will not introduce to the Premises or the Work site any Hazardous Substances without the prior written approval of Company. For any goods or materials furnished in accordance with the Contract which are defined as Hazardous Substances under Applicable Environmental Laws, Vendor will provide Company with warning and safe handling information in the form of a material safety data sheet (MSDS) and appropriate

labeling for such goods and materials. Unless approved in writing by Company's location manager prior to shipment, Vendor will not deliver any goods containing asbestos.

Section 18. Cleaning.

Vendor will at all times keep the Work site and the adjoining premises, driveways, and streets clean of rubbish caused by Vendor's operations and, at the completion of the Work, will remove all rubbish and all of its tools, equipment, temporary work, and surplus material and will have the Work clean and ready for use. If Vendor does not attend to such cleaning immediately upon request, Company may cause such cleaning to be done by others and charge the cost to Vendor.

Section 19. Title and Risk of Loss.

Unless otherwise agreed, Company will have proportionate title to all Work and materials delivered to and stored at the Work site which Company has made payment to Vendor from time to time. Vendor is responsible for the security of the Work, Worksite, and all Vendor and Company materials and equipment thereon during the course of the Work. Vendor will be liable for any loss or damage to the Work, Work site and Vendor and Company materials and equipment caused by Vendor, its subcontractors, or others, during the course of the Work, and Vendor will replace or repair said damaged Work, materials, and/or equipment at its own cost to the complete satisfaction of Company.

Section 20. Vendor's Liability and Indemnity Obligations.

"Indemnitees" means Company, its parents, affiliates and its and their directors, officers, employees, agents, successors and assigns. Vendor will indemnify, protect, defend or settle (at Vendor's expense) and hold harmless Indemnitees from and against 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") 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, Work 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. For the avoidance of doubt, Vendor expressly agrees that Vendor will indemnify, defend and hold harmless the Indemnitees in connection with this Section 20 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 20. 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 21. Insurance.

. Insurance.

- (A) Unless otherwise specified in the Contract, Vendor will, during the progress of the Work, maintain the following types of insurance coverage:
- Worker's Compensation insurance in accordance with the laws of all states where Vendor will conduct work pursuant to this Agreement.
- (2) Comprehensive General Liability:
Bodily Injury: \$2,000,000 per individual
\$5,000,000 per occurrence
Property Damage: \$2,000,000
- (3) Comprehensive Automobile Liability to include machinery:
Bodily Injury: \$2,000,000 per individual
\$ 5,000,000 per occurrence
Property Damage: \$ 2,000,000
- (4) Professional Liability:
\$2,000,000 per occurrence
- (5) Umbrella Coverage \$5,000,000
- (B) Vendor agrees that during the progress of the Work, Company will be an additional insured on Vendor's

certificate of insurance for the above mentioned policies and that all Vendor's insurance identified in Section 21(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.

- (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, (b) Company is designated as an additional insured on Vendor's policies and (c) all of Vendor's insurance identified herein will be primary and not contributory or excess of any other insurance carried by or on behalf of Company.
- (D) The requirements in this Section 21 are separate and distinct from any other obligations of Vendor under this Contract.

Section 22. Bonds.

If required by Company, Vendor will furnish a performance and a labor and material payment bond, or such other bond, in form and amount with such sureties as will be approved by Company.

Section 23. Liens.

Vendor guarantees that Vendor, or anyone claiming under or through Vendor such as, subcontractors, and materialmen will not make, file, or maintain a mechanic's or other lien or claim of any kind or character against any building or other structure to which the Contract relates, the additions, improvements, alterations, or repairs made on such buildings or other structures, the ground on which said building or other structure is situated, or any other property or property interest owned, held, occupied, or otherwise possessed by Company, for or on account of any labor, materials, fixtures, tools, machinery, equipment, or any other things furnished, or any other work done or performance given under, arising out of, or in any manner connected with the Contract, or any agreement supplemental to the Contract (such liens or claims referred to as "Claims"); and Vendor, subcontractor, and materialmen expressly waive and relinquish any and all rights which they now have, or may subsequently acquire, to file or maintain any Claim and Vendor, subcontractor, and materialmen agree that this provision waiving the right of Claims will be an independent covenant.

Section 24. Intellectual Property Indemnification.

Vendor will indemnify, protect, defend or settle (at Vendor's expense) and hold harmless Indemnitees from and against all Liabilities incurred 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 Work supplied under this Contract In

the event of an allegation of intellectual property infringement or if the use or sale of the Work is enjoined, Vendor will, at its own expense and at Company's option, either (i) procure the right to continue using the Work; (ii) make such alterations, modifications or adjustments to the Work 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 the purchase price. 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 Work, and completion, termination, or cancellation of this Contract. If any settlement requires any affirmative obligations (other than ceasing use of the Work) of, 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 25. Assignment.

Vendor will not assign the Contract or any moneys to become due under the Contract without the prior written consent of Company. No assignment will relieve Vendor of any obligation under the Contract. Any attempted assignment without the prior written consent of Company will be null and void.

Section 26. Termination of Contract by Company.

- (A) Should Vendor at any time refuse or fail to prosecute the Work with promptness and diligence, or to perform any of its other obligations under the Contract, Company may terminate Vendor's right to proceed with the Work by written notice to Vendor. In such event Company may enter upon the Work site and finish the Work by whatever method it may deem expedient, including the hiring of another contractor or other contractors and, for that purpose, may take possession of all materials, machinery, equipment, tools, and appliances and exercise all rights, options, and privileges of Vendor. If Company's remedy costs exceed the unpaid balance to Vendor, Vendor will be liable for and will pay the difference to Company.
- (B) Company may, for its own convenience, terminate Vendor's right to proceed with any portion or all of the Work by written notice to Vendor. Such termination will be effective in the manner specified in such notice, will be without prejudice to any claims which Company may have against Vendor, and will not affect the obligations and duties of Vendor under the Contract with respect to portions of the Work not terminated.
- (C) On receipt of notice under Section 26(B), Vendor will, with respect to the

portion of the Work terminated, unless the notice states otherwise,

(1) immediately discontinue such portion of the Work and the placing of orders for services, materials, facilities, and supplies in connection with the performance of the Work; and

(2) complete only such portions of the Work which Company deems necessary to preserve and protect those portions of the Work already in progress and to protect material, plant, and equipment at the Work site or in transit to the Work site.

(D) Upon termination pursuant to Section 26(B), Vendor will be paid a pro rata portion of the compensation in the Contract for any portion of the terminated Work already performed. Upon determination of the amount of said pro rata compensation, Company will promptly pay such amount to Vendor upon delivery by Vendor of the releases of liens and affidavit, pursuant to Section 10(D).

Section 27. 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 the Work 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 the Work for Company.

Any description of the Work 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 27, 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 27(B)(1), (2) or (3) apply with respect to certain Information so as to permit disclosure to a third party or use beyond that specified in this Section 27, 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 the Work 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 the Work 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 the Work 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 27. 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 27 will continue in effect for a period of ten (10) years from the date on which the Work was last 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.
- (H) Vendor will enter into agreements to effectuate the provisions of this Section 27 with all persons who perform any part of the Work for Company prior to any such performance, and a copy of said agreements will be provided to Company by Vendor if requested by Company.

Section 28. 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 27(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.

Vendor represents and warrants that it will not export, directly or indirectly, any technology, software or commodities of U.S. origin or having U.S. content provided by Company or their direct product to any of the countries or to nationals of those countries, wherever located, listed in U.S. Export Administration Regulations, as modified from time to time, unless authorized by appropriate government license or regulations.

Section 29. Ownership of Materials and Goods.

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 the Work 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 the Work, without modification or alteration, except as reasonably necessary or appropriate to the performance of the Work and, upon Company's request, will be delivered by Vendor to Company. 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.

Section 30. 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 31. Exclusion of Certain Persons.

Vendor, at its own expense, will have background and credit checks performed on each employee that it plans to assign to work on 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. Vendor will not, without the prior written consent of Company, permit any person other than officers, employees, or representatives of Company, Vendor, or its subcontractors to enter upon the Premises. Vendor will not, without the consent of Company, knowingly employ upon the Premises, any person who is a member of or associated with any organization designated by the United States Attorney General as having interest in conflict with those of the United States, or does not possess the necessary lawful means to obtain work within the United States. Company will have the right to immediately bar or remove from its Premises any such individual.

Section 32. Equal Employment Opportunity.

Vendor and the Work 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. Unless this Contract is exempted by law, Vendor will comply with Executive Order 11246, 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 will 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, upon execution of this Contract, Vendor will furnish to Company an executed Certificate of Non-segregated Facilities.

Section 33. 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 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. Supplier acknowledges and agrees that (i) it has in place currently, or will implement as soon as possible after execution hereof, a 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. Each electronic transmission and use of digital identification or digitally reproduced signatures will be deemed for all purposes to constitute a "signature" and will have the same effect as a signature on a written document.

Section 34. Import/Export Compliance.

If any Work is to be delivered into any other country, Vendor will be responsible for strict compliance with all legal, regulatory and administrative requirements associated with any importation or exportation of such Work, including obtaining any required licenses or approvals and the payment of all associated duties, taxes and fees.

Section 35. Limitation on Use of Payment.

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 instrument 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 36. Transition of Supply.

In connection with termination of this Contract or Company's decision to change to an alternate provider of the Work, Vendor will cooperate in such transition, including the following (collectively, "Transition Support"): (a) Vendor will continue delivery of all Work 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 Work 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 37. 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 its 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 Work 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 38. Audit Rights

Vendor will keep full and detailed accounts and records as may be necessary to reflect the actual cost of all Work performed and these records will be subject to audit by the Company upon prior notice to the Vendor.

Section 39. Miscellaneous Provisions.

- (A) 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.
- (B) 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.

- (C) 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.
- (D) 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.
- (E) Vendor warrants that it will comply with all foreign, federal, state and local laws and regulations.
- (F) Vendor will procure all licenses, permits and other approvals from all applicable government authorities and agencies which are necessary for performance of the Work for Company prior to performing the Work.

Section 40. 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.