



GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS – SHORT FORM

1. REPRESENTATIONS: Supplier understands that he must rely upon his own examination and investigation as to the scope and location of the Work to be performed, the surface and subsurface conditions at the site, and all local and general conditions which may affect performance of the Work.
2. SUPPLY OF ITEMS: Supplier shall supply and pay for all labor, tools, implements, equipment, machinery, utilities, materials, necessary supervision and any other item or service needed for the Work, except those items, if any, specified to be supplied by Owner.
3. PERFORMANCE OF WORK: Supplier shall perform the Work in the best and most workmanlike manner, using qualified, efficient and careful workers, in strict accordance with the plans, drawings and specifications or any modifications thereto as approved in writing by Owner, and in compliance with all health, safety, security, fire protection and first aid requirements set forth in Exhibits “S” and “S-1,” “Supplier Health, Safety, Security, Fire Protection and First Aid Requirements,” to this Contract. Supplier shall take all reasonable precautions to perform the Work so as not to interfere with Owner’s operations or with the operations of other contractors working on Owner’s premises.
4. PERMITS, LICENSES AND FEES: Supplier shall obtain and pay for all permits and licenses and shall pay all fees and shall make all deposits which may be required by law or regulation to be obtained, paid for or made in connection with the prosecution of the Work, except for any such permits, licenses, fees and/or deposits which Owner may be required by law or regulation to obtain, pay for or make directly. The actual out-of-pocket cost of all such permits, licenses, fees and/or deposits obtained, paid for or made by Supplier will be in addition to the Contract price and will be paid by Owner to Supplier without markup upon submission of a proper invoice.
5. BONDS: If required by this Contract, Supplier shall furnish Owner payment and/or performance bonds in the dollar amount of the Contract and in such form as may be directed by Owner. The premiums for such bonds will be in addition to the Contract price and will be paid by Owner to the surety upon submission of a proper invoice.
6. SUPPLIER-FURNISHED INSURANCE:
 - A. Supplier shall, at his expense, procure and maintain the following insurance:
 - (a) WORKERS’ COMPENSATION INSURANCE in the amount required by all applicable laws, including, without limitation, the Longshore and Harbor Workers’ Compensation Act and any other federal compensation act or maritime act, and EMPLOYER’S LIABILITY INSURANCE to a limit of not less than \$1,000,000. Supplier before commencing the Work shall be qualified under the workers’ compensation laws of the state or states in which the Work or any portion of the Work is to be performed and shall at all times comply with the provisions of said laws. All subcontractors of Supplier shall be required by Supplier to maintain the above described insurance coverages and to comply with qualification requirements of all applicable workers’ compensation laws; Supplier shall do so on behalf of his subcontractors if his subcontractors fail to maintain said insurance or to comply with said qualification requirements.
 - (b) COMPREHENSIVE GENERAL LIABILITY INSURANCE, including, without limitation, automobile liability covering Supplier and his employees for all of Supplier’s operations hereunder, including, without limitation, the operations of all subcontractors, the operation of vehicles and equipment by Supplier or any and all subcontractors and liability assumed under the “Indemnity” provision of this Contract, with limits of not less than \$1,000,000 as a combined single limit for injury to, or death of, any person or persons and for property damage, including consequential loss, arising out of any single occurrence.
 - B. Prior to commencement of the Work, Supplier shall provide Owner with certificates of insurance which demonstrate compliance with the terms of this Article 6. The Comprehensive General Liability Policy (a) shall name Kaiser Aluminum & Fabricated Products, LLC as an additional insured, (b) shall provide that other insurance which Owner may have to insure loss shall be in excess of and not contribute to a loss to which the insurance provided herein by Supplier is applicable, and (c) shall provide that the insurer waives any right to subrogation which might arise by reason of any payment under the policies against Kaiser Aluminum & Fabricated Products, LLC, its subsidiaries, its affiliated companies and the agents and employees of any of the foregoing.
 - C. Insurance deductibles, if any, shall not exceed \$10,000 per occurrence and shall be absorbed entirely by Supplier with no contribution by Owner. In the event of a reduction or exhaustion of any aggregate limit, Supplier shall secure additional insurance or shall have excess insurance available so as to comply at all times with the above requirements as to limits.

the requirements of this Contract unless first directed, in writing, by Owner, and thereafter shall promptly comply with all such written directives of Owner.

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

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

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

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

8. RECORDS: Supplier shall keep a complete set of accounts and records on a cost accounting basis, in accordance with generally accepted accounting principles, showing all expenditures made under this Contract including, without limitation, Supplier's detailed estimate including all takeoff, recap and work sheets prepared in connection therewith, time sheets for all employees engaged in performing the Work and all cost reports generated in connection with this Contract. If this Contract provides for compensation on a cost or time and material basis or if Supplier claims compensation from Owner under Article 9 "Changes," Article 15 "Suspension of Work," Article 16 "Termination for Convenience" or otherwise, as a condition precedent to any obligation of Owner to pay for Work hereunder, Owner shall have the right to inspect, audit and otherwise verify such accounts and records; and Supplier shall furnish any supporting information in connection with such accounts and records as owner may request.

9. CHANGES:

A. Owner, at all times and without notice to Supplier's surety, if any, shall have the right to correct errors or omissions in and to make any changes in or deletions from or additions to the scope or complexity of the Work, and such right shall include, without limitation, the authority to change the drawings and specifications, the method or manner of performance of the Work, any Owner-furnished items and to accelerate the performance of the Work. Supplier shall not depart from

B. Within five (5) days after receipt of such written notice, Supplier shall give Owner an estimate of the increase or decrease in the cost of the Work and time of performance resulting from such changes. The Contract price shall be increased or decreased, as the case may be, on account of each authorized change, addition or deletion by an amount equal to the sum of (a) the lowest reasonable increase or decrease, if any, in the direct cost of performing the Work resulting from such change, addition or deletion and (b) the allowances provided for in this Contract, or if no allowances are stated in this Contract, a maximum of fifteen percent (15%) of the direct cost to cover overhead and profit as the combined allowance to Supplier and all subcontractors for overhead and profit, provided that if the Contract price provides for unit prices, such unit prices shall be applicable in lieu of the amounts specified in clauses (a) and (b) of this sentence to the extent such change, addition or deletion involves Work covered by such unit prices. If any change or accumulation of changes is covered by unit prices or if unit prices are subsequently agreed upon and if quantities originally contemplated are so changed by such written Owner directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to Owner or to Supplier, the applicable unit prices shall be equitably adjusted. Under no circumstances, however, shall Supplier be entitled to any amount for indirect costs, damages or expenses of any nature regardless of the number, nature or timing of changes to the Work including, without limitation, "impact" costs or labor inefficiency costs. The time for performance shall be increased or decreased, as the case may be, for each authorized change, addition or deletion by the lowest reasonable number of days by which the time required for Supplier's completion of each phase of the Work will be increased or decreased, if at all, as a result of such change, addition or deletion.

C. Owner may determine the amount of the increase or decrease in the Supplier price and time for performance, if any, necessary to reasonably compensate Supplier for such change and shall issue an amendment to this Contract providing for such change in the Contract price and time for performance. Each such determination by Owner shall be final and binding upon Owner and Supplier; and this Contract shall be modified in accordance therewith unless within thirty (30) days following Supplier's notice or receipt of such determination, Supplier protests such determination by written notice to Owner. Pending final resolution of any dispute arising under this Contract, unless Owner and Supplier otherwise agree in writing, Supplier shall proceed diligently with the performance of the Work and Owner shall continue to make payments subject to the terms of Article 12 "Payment."

10. DELAYS: If Supplier is delayed at any time in prosecuting the Work by (a) any act or neglect of Owner,

(b) changes in the Work, (c) delays, which Supplier could not reasonably foresee or provide against, in the issuance of permits, certificates or approvals from any governmental authority (collectively, clauses (a) through (c) of this sentence, the "Compensable Delays") or by (d) fire or unavoidable casualties, (e) unusually severe and abnormal climatic conditions or (f) any other cause which Supplier and his subcontractors could not reasonably foresee or provide against (collectively, clauses (d) through (f) of this sentence, the "Excusable Delays"), then the Contract price and time for performance shall be adjusted as follows.: In the event of Compensable Delays, Supplier shall be entitled to an equitable adjustment both in the Contract price and in the time for performance. In the event of Excusable Delays, Supplier shall be entitled only to an equitable adjustment in the time for performance. For Compensable Delays, Supplier's sole monetary compensation shall be for extended duration costs determined by (a) computing the actual excess field direct costs for the extended duration, plus (b) a reasonable amount for similar items as substantiated by any subcontractor, plus (c) escalation in labor and materials costs related to industry-wide increases in the costs of such items, plus (d) five percent (5%) of the sum of clauses (a) through (c) of this sentence for home office overhead. In determining the compensation due hereunder for Compensable Delays, no allowance shall be made for profit. If Supplier is delayed by lack of materials or equipment, Owner may supply such materials or equipment and the cost of such materials or equipment shall be deducted from the Contract price.

11.INSPECTION AND ACCEPTANCE:

A. Owner may visit, take inventory and inspect the Work and make tests thereon at all times and places during the progress of the Work, and Supplier shall provide access and reasonable facilities for such inspection and tests. If any law, ordinance, regulation, code or governmental authority requires any of the Work to be tested, inspected or approved, Supplier shall give Owner reasonable notice of the time and place thereof and cause the same to be undertaken at Supplier's expense.

B. If Supplier's Work is defective or fails to comply with the plans and specifications, Owner may require Supplier to correct the defective Work or Owner may have the defective Work corrected by others; and, in either event, Supplier shall bear the cost of such correction.

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

D. Neither the issuance of a Certificate of Completion and Acceptance nor any other inspection, approval or payment, including final payment, under this Contract

shall be construed to be an acceptance of defective material or workmanship or shall be an admission of Supplier's satisfactory performance of the Work and shall not relieve Supplier of any of his obligations under this Contract.

12.PAYMENT:

A. Supplier shall receive the Contract price as full and complete payment for the Work hereunder. Subject to all other provisions of this Contract, the above compensation shall be paid as provided in this Article 12.

B. Within ten (10) days after the end of each month, Supplier shall submit a detailed estimate of the value of the Work done and materials delivered to the project site during such month.

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

D. As a condition precedent to any payment of retention moneys under this Contract, Supplier may be required to execute a written general release and waiver of all claims against Owner, its subsidiaries, affiliated companies and the directors, officers, employees, agents, representatives and property of any of the foregoing arising under or in any way connected with this Contract, and Owner may further require Supplier to furnish comparable written general releases and waivers of all claims by any and all subcontractors, assignees, vendors or others furnishing labor, materials, services or equipment in connection with Supplier's performance of this Contract except, in each case, for disputed claims, made in good faith, and specifically reserved in any such release and waiver furnished by Supplier or any of his subcontractors, assignees, vendors or such others.

E. Without limiting any other rights which Owner may have, whether pursuant to this Contract or otherwise, Owner may withhold all or any portion of any progress payment or final payment as and to the extent Owner, in good faith, determines such withholding to be necessary in order to protect it from loss because of (a) defects in workmanship or materials, (b) claims, levies, attachments, stop notices or court orders filed, or evidence indicating probable filing of such claims, levies, attachments, notices or orders, including claims covered by insurance until such claims are accepted by Supplier's insurance carrier, (c) claims, whether valid or not, that Supplier has failed to make payments promptly or properly to his subcontractors, or for labor (including fringe benefits) or for materials, equipment, transportation, shipping costs, services, taxes, fees or any other obligation arising out of the Work; (d) reasonable indication that the Work cannot be completed for the unpaid balance of the Contract price, (e) damage to Owner's property, any portion of the Work or to any work performed by Owner, another supplier or

subcontractor, (f) reasonable indication that the Work cannot be completed within the time for completion set forth in this Contract, (g) failure to furnish sufficient, properly skilled labor or to supply sufficient materials or otherwise to diligently prosecute the Work, (h) failure to deliver updated progress schedules if required under the provisions of this Contract as to content or time for submission, (i) failure to deliver, if required under the provisions of this Contract, insurance certificates, bonds, as-built information, written guarantees or warranties or to obtain permits or approvals required by any authority having jurisdiction over the Work, (j) failure to adhere to laws, ordinances, regulations or orders of any authority having jurisdiction over the Work or the project site, (k) failure to discharge or bond a mechanic's or materialman's lien or notice of lien or stop notice filed against any part of the Work or the project site in a manner satisfactory to Owner, or (l) any other failure to perform in accordance with the provisions of this Contract. If Owner exercises its right to withhold hereunder in good faith, Supplier shall not be entitled to any interest whatsoever on the money so withheld, regardless of the outcome of any subsequent claim resolution. When the cause for any withholding hereunder has been remedied by Supplier to Owner's satisfaction, the amount withheld shall be released and paid.

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

13.LIENS: Supplier shall immediately discharge or obtain releases for stop notices, liens, attachments or levies which may be filed in connection with the Work or any work by Supplier under any other contract with Owner. Owner may withhold from any moneys due Supplier, in addition to amounts withheld under Article 12 "Payment," one hundred twenty-five percent (125%) of the aggregate amount of stop notices, liens, attachments or levies until the same are discharged, satisfied or released.

14.DAMAGES: Time is of the essence of this Contract. Supplier understands that damages to Owner may result from any delay in completion of the Work or portions thereof.

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

made necessary by the suspension, is increased or decreased by such suspension, the Contract price shall be adjusted in accordance with the provisions of Article 9 "Changes" unless the suspension is necessitated, in whole or in part, by a failure of Supplier to comply with the requirements of this Contract.

16.TERMINATION FOR CONVENIENCE:

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

B. In the event of a termination of the Work or any portion thereof under this Article 16, Owner will pay to Supplier, subject to the limitations hereinafter set forth, the sum of (a) the costs incurred by Supplier in the performance of the terminated portion of the Work prior to termination, (b) an allowance for overhead, general and administrative expenses, including those of all subcontractors, which shall in no event exceed fifteen percent (15%) of direct costs, and (c) an allowance for profit not to exceed ten (10%) of the foregoing in lieu of profit. Deductions will be made by Owner for amounts previously paid to Supplier and for any amounts which may be due Owner or which Owner may offset or withhold by the terms hereof. In any event, the total amount of all payments to Supplier shall not exceed the proportion of the total Contract price that the Work actually performed (including materials delivered to the project site or in transit to the project site) at the date of termination (less a reasonable allowance to cover the cost of correcting any defective Work) bears to the entire Work to be performed hereunder. Any payment to Supplier under this Article 16 shall be made in accordance with the provisions of Article 12 "Payment."

17.FAILURE BY SUPPLIER:

A. In the event (a) Supplier fails to diligently prosecute the Work (except in cases for which an extension of time is provided), (b) Supplier fails to make the progress set forth in this Contract, (c) Supplier fails to supply enough properly skilled workers or proper materials for the Work, (d) Supplier performs the Work in a manner which he knows or should have known to be defective, (e) Supplier disregards any laws, ordinances, regulations or

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

B. In the event Owner exercises any of its rights under Paragraph A of this Article 17, Supplier shall not receive any further payment for the portion of the Work taken out of the hands of Supplier until the Work is completed. The actual expense of completion, including subcontracting costs and compensation for materials and equipment furnished by Owner and for its managerial and administrative expenses attributable thereto, shall be certified by Owner and shall be binding on the parties. If such expense shall be less than the unpaid balance of the Contract price to be paid Supplier for fully performing the Work, the difference shall be paid to Supplier in accordance with the provisions of Article 12 "Payment", and the property of Supplier or such other person shall be released to Supplier or such other person, as the case may be, at the project site. If such expense exceeds the unpaid balance of such Contract price, Supplier shall promptly pay the difference to Owner on demand. Owner may retain possession of and/or place in storage Supplier's or such other person's equipment and property, at the sole risk and expense of Supplier or such other person, as the case may be, until such payment is made, and may, upon sixty (60) days' notice, sell the same at public or private sale and be a purchaser thereat and may execute any act or deed on behalf of and as agent of Supplier or such other person, as the case may be, to complete the sale and to transfer and perfect the title of any purchaser thereof.

C. In addition to the rights provided above, Owner shall have and may exercise or enforce any other rights or remedies provided by law or equity for any default or breach by Supplier, and Supplier shall be liable for and shall pay any losses or damages suffered by Owner

arising out of any such breach or default by Supplier in the performance of this Contract.

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

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

20. PATENTS, TRADE SECRETS, COPYRIGHTS AND TRADEMARKS:

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

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

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

21. LABOR AGREEMENTS AND COSTS:

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

B. Unless expressly provided otherwise in this Contract, no adjustment in payment will be allowed Supplier for any increase in labor costs, including, without limitation, changes in working conditions, wages and fringe benefits.

22. INDEMNITY:

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

concurrent negligence of Owner, its directors, officers, employees, agents and representatives (other than Supplier or anyone acting on his behalf), in which event Supplier's liability for the payment of damages, costs and expenses hereunder shall be reduced in proportion to the negligence of Owner, its directors, officers, employees, agents and representatives (other than Supplier or anyone acting on his behalf) on the basis of comparative negligence or fault.

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

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

23. TAXES:

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

B. Supplier shall be responsible for and shall pay all contributions, taxes and assessments which are measured by wages, salaries or other remuneration paid to persons employed by Supplier or his subcontractors

for the Work, or which arise by virtue of their employment, and which now or hereafter may be imposed by any governmental body. Such contributions, taxes and assessments shall include, without limitation, those for social security, disability, unemployment and other benefits, and for income withholding taxes. Supplier shall comply with all administrative regulations relating to such matters.

24. **TOXIC AND HAZARDOUS SUBSTANCES:** Supplier shall fully comply with all applicable toxic or hazardous substance information and/or control laws and regulations and shall notify Owner and all other employers with personnel at the site of the Work of any toxic or hazardous substance which Supplier uses or intends to use. Supplier shall further provide Owner and all other employers with personnel at the site of the Work with a "Materials Safety Data Sheet" pertaining to any toxic or hazardous substance which Supplier uses or intends to use in the Work. Supplier shall immediately notify Owner should he encounter any toxic or hazardous substances on the project site while performing the Work and shall take such action with respect thereto as is requested by Owner.

25. **LAWS AND REGULATIONS:** Throughout the performance of the Work, Supplier shall comply with all applicable federal, state and local laws, ordinances and regulations, whether existing or hereafter enacted, of all governing bodies having jurisdiction over the Work or any part thereof. In addition, Supplier shall comply with all rules and regulations which, from time to time, may be issued by Owner concerning security, health, welfare, conduct and other similar matters.

26. **NOTICES:** All notices under this Contract shall be in writing and may be served by either party on the other by hand, facsimile, telex, telegram, cablegram or regular mail addressed to the respective party at the address indicated in this Contract. The address of either party or their representative(s) may be changed at any time by written notice of such change to the other party. Any such notice shall be effective upon delivery to the intended recipient or seven (7) days after being placed in the ordinary course of the mail, postage paid and properly addressed, whichever occurs first.

27. **INDEPENDENT SUPPLIER:** Supplier shall perform the work solely as an independent supplier and not as the agent or employee of Owner.

28. **ASSIGNMENT AND SUBCONTRACTING:** Neither this Contract nor any right, privilege or obligation hereunder shall be assigned or delegated by subcontract or otherwise in whole or in part by Supplier without the prior written consent of Owner. Any attempted assignment without such prior written consent shall be void.

29. **WAIVER:** No waiver of any provision of this Contract shall constitute a waiver of any other provision of this Contract or of the same or any other provision in any other instance. No waiver shall be effective except in

writing signed by the authorized representatives of the parties hereto.

30. **ENTIRE CONTRACT:** This Contract contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all negotiations, proposals, agreements and understandings, whether written or oral, with respect thereto. No amendment, variance or change in the provisions of this Contract shall be effective except in writing signed by the authorized representatives of the parties hereto.

31. **APPLICABLE LAW AND RESOLUTION OF DISPUTES;**

A. This Contract shall be governed by and construed in accordance with the laws of the State where the project site is located without reference to principles regarding conflicts of laws.

B. The parties hereto will attempt in good faith to resolve promptly any controversy, claim or dispute arising out of or relating to this Contract (collectively, a "Dispute") by means of negotiation. If any Dispute should arise, Owner's representative and Supplier's representative shall meet at a mutually acceptable time and place within ten (10) days after either party has received written notice from the other party of the existence of such Dispute, and thereafter as often as they reasonably deem necessary, to exchange all relevant information and to attempt to resolve the Dispute. If the Dispute has not been resolved within twenty (20) days after receipt of written notice of such Dispute or if the representative of the party receiving such notice will not meet within ten (10) days, the Dispute shall be referred to senior executives of the parties with full authority to settle the Dispute (the "Senior Executives") who shall likewise meet to attempt to resolve the Dispute. To the extent they have not already done so, the parties shall exchange all relevant information and statements of their position on all issues relevant to the Dispute. If the Dispute has not been resolved within twenty (20) days following referral to the Senior Executives or if no meeting of Senior Executives has taken place within ten (10) days after such referral, either party may then initiate mediation of the dispute as provided in Paragraph C of this Article 31.

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

D. If the Dispute has not been resolved through mediation as contemplated in Paragraph C of this Article 31 within ninety (90) days of the commencement of such procedure, or if either party will not participate in such procedure, the Dispute (and any dispute, disagreement or controversy as to whether such Dispute is subject to arbitration pursuant to this Paragraph D) shall be settled by arbitration in accordance with the Commercial

Arbitration Rules of the American Arbitration Association, as then in effect, by three (3) arbitrators of whom each party shall appoint one (1). The arbitration shall be governed by the United States Arbitration Act, as then in effect. The award of the arbitrators shall be final and binding on all parties to the arbitration. Judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof. The place of arbitration shall be in the county where the project site is located, unless the parties shall mutually agree otherwise. The arbitrators are not empowered to award damages in excess of actual damages, including, without limitation, any exemplary or punitive damages.

E. In the event that Supplier makes any claim for additional compensation hereunder and refuses to accept Owner's settlement offer or demand with respect thereto, Supplier shall pay all of Owner's attorneys' fees and other costs of defending such claim, whether incurred prior to or after such offer or demand is made, unless Supplier recovers an amount equal to or greater than one hundred and twenty percent (120%) of Owner's highest such settlement offer or demand.