



**TERMS AND CONDITIONS FOR**  
**DESIGN, BUILD AND INSTALL EQUIPMENT CONTRACTS**  
**(rev. 03/08)**

**Section 1. Definitions.**

- (A) “Company” means Alcoa Howmet or any subsidiary or affiliate of Alcoa Howmet executing the Contract to which this document is attached.
- (B) “Seller” means the individual, corporation or other entity which is to perform the Work purchased by the Company pursuant to this Contract.
- (C) “Work” means all equipment, items, parts, materials, labor or other services provided by Seller as specified in the Contract.
- (D) “Contract” means the written contract, purchase order or agreement which attaches, incorporates or otherwise references these terms and conditions, and any other documents and schedules, if any, which are by reference made a part of the Contract.
- (E) “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, 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1471 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 through 2629; and the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j; 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.
- (F) “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.
- (G) “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.

- (H) “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 Seller for payments by Company.

## **Section 2. Site and Other Examinations - Observance of Laws.**

- (A) Seller 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.
- (B) Seller 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. Seller 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) Seller 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.
- (D) Seller will hold Company harmless from any liability or penalty incurred or imposed by reason of an asserted or actual violation by Seller of any such laws, regulations, ordinances, governmental restrictions, or other rules.

## **Section 3. Specifications and Drawings.**

- (A) Seller 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 Seller and corrected before being submitted to Company. Approval of shop drawings by Company will not relieve Seller from responsibility for errors or omissions in the shop drawings, and Seller, notwithstanding such approval, will correct all errors and omissions.
- (B) Seller must keep a copy of the drawings and specifications at the Premises at all times. Anything mentioned in the specifications and not shown on the drawings, or shown in the drawings and not mentioned in the specifications, will be of like effect as if shown and mentioned in both. 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 Seller, 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 Seller 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 Seller, 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 4. 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, Seller 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 4 will be deemed to be defective material for purposes of Section 5.

#### **Section 5. Inspections and Tests.**

- (A) Company and its representatives will at all times have access to the Work wherever it is being performed, and Seller will provide proper facilities for such access and for inspection. When any item of Work is being executed away from the Premises, Seller 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 Seller 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 charge the expense to Seller. 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, Seller 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 Seller or its subcontractors, Seller 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, Seller will be reimbursed by Company for removal, examination and replacement, in accordance with Section 8(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 Seller 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, and Company will, unless otherwise provided in the Contract, pay Seller's actual costs of such tests and engineering services. 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 6. Schedule For Completion -- Overtime -- Delays.**

- (A) Seller 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 6.
- (B) If a delay is not caused by or contributed to by any act or omission of Seller, 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 Seller to work additional time to make up any such delays, Company will pay Seller for such additional time in accordance with the provisions of Section 8(C).
- (C) If Company directs Seller 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 Seller or its subcontractors for the following:
  - (1) Seller's on-site salaries for supervisory, clerical, and other office help;
  - (2) the invoice cost of third party rental vehicles, equipment, and facilities; and
  - (3) other similar expenses, including, but not limited to, Seller-owned equipment, tools, vehicles and facilities which Company judges to be reasonable.

The salaries of supervisors not located at the site, other overhead, other office expenses, and profit will not be paid, nor will any Seller markup of subcontractor billings be permitted. Seller 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 Seller, no extension of time will be granted by Company, and Company will have the right to charge Seller for any costs paid by Company to others to eliminate the delay. Company may require Seller to work overtime at Seller's expense to make up any time lost as a result of such delay.
- (E) The time of Seller's performance is of the essence for this Contract. The Work will be completed in accordance with the schedule set forth in the Contract. Seller 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 6 must be made in writing within five (5) working days from the date the delay commences.
- (G) It is understood that others may work in the same area occupied by Seller. Seller will fully cooperate in scheduling the Work so that a minimum of interference will occur.

**Section 7. Baseline Responsibility.**

- (A) Before proceeding with the Work, and from time to time as the Work progresses, Seller will examine work installed by others including but not limited to lines and grades which influence the Work and shall promptly notify Company in writing if any condition exists that will prevent seller from satisfactorily completing the Work. If Seller proceeds without such notification and it is then necessary to reconstruct any part of the Work because of such condition, Seller will reconstruct such part without expense to Company.
- (B) Seller 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 Seller from its responsibility defined in (A) above or elsewhere in the Contract.

**Section 8. 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, Seller 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 Seller:

- (A) by adding or deducting a lump sum (if requested by Company, Seller will provide a detailed cost breakdown);

- (B) by adding or deducting unit prices;
- (C) by adding with respect to additions to the Work on Company's Premises:
  - (1) actual straight time wage cost of all direct labor employed up to and including the first tier of foreman which includes base wage rate, payroll taxes consisting of FICA, Federal and State Unemployment; insurance's consisting of Worker's Compensation Insurance and Commercial General Liability Insurance, fringe benefits, subsistence, and other contributions as determined by the applicable trade agreements, or prevailing wages and benefits established by Seller in the absence of trade agreements. 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. Seller will furnish one copy of each current trade agreement to Company;
  - (2) 20% of Section 8(C)(1) to cover all required safety and personal protection equipment, equipment and small tools (under \$5,000 replacement value), transportation within the site of personnel, items of material not consumed directly in the Work, superintendence above the first tier of foreman, all administrative, clerical, office, and other overhead expense incurred at the site or elsewhere, and profit;
  - (3) actual cost of the premium portion of approved overtime labor, including insurance, taxes, benefits, and other contributions required of Seller;
  - (4) an amount for equipment, fueled, maintained but without operator, and tools used (over \$5,000 replacement value) at previously agreed rental rates;
  - (5) actual cost of all materials furnished and expendable tools and supplies consumed directly in the Work (Seller to obtain all available discounts);
  - (6) actual cost of any items of Work performed by subcontractors. (Subcontractors on a cost plus basis will be reimbursed by Seller in accordance with this Section 8(C));
  - (7) 5% of Section 8(C)(5) and (6); and
  - (8) actual cost of any sales tax paid on materials, tools, and supplies covered by Section 8(C)(5).

Separate records, subject to audit by Company, must be kept for any payments to be made pursuant to Section 8(C). Seller must submit for Company's approval a list of all wage costs determined pursuant to Section 8(C)(1) and (3) and a list of all equipment and tools with the rental rates to be charged pursuant to Section 8(C)(4). Any claim for adjustment under this Section 8 must be asserted in writing by Seller 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. The payment schedule for each change will be agreed to by Company and Seller and identified in a change order.

**Section 9. 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 Seller during the progress of the Work and according to the terms of payment as specified in the Contract. Seller's progress billing invoice will include progress payments due for the original scope of work and changes. 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 8(C), must have subcontractor and/or materialman invoices attached to Seller's invoice. Other format and support documents for invoices will be determined by Company in advance of the first invoice cycle.
- (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 Seller 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 Seller to perform any of its other obligations under the Contract, or to protect Company against any liability arising out of Seller'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 Seller's expense.
- (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 for Seller or subcontractor Work in excess of \$25,000 and

- (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 an averment that all of the said persons have been paid in full.

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

- (D) Acceptance by Seller of payment of the final Progress Milestone payment pursuant to Section 9(C) will constitute a waiver, release, and discharge of any and all claims and demands of any kind or character which Seller 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 Seller, 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 10. Taxes.**

- (A) Seller will bear and pay all applicable taxes of the United States and any other country, including any political subdivision of any of them, if the tax is based on or measured by gross receipts or net income, or payment of which is required to maintain a legal existence or a general right to transact business within the taxing jurisdiction.
- (B) Seller will withhold, and require its subcontractors, where applicable, to withhold all required taxes and contributions of the United States, any other country or any political subdivision of any of them which is measured by wages, salaries or other remuneration of its employees or the employees of its subcontractors as required by the United States Internal Revenue Code, the United States Federal Insurance Contribution Act, the United States Federal Unemployment Act, and any laws of any other country or any political subdivision of any of the foregoing which requires withholding of any income or employment taxes as measured by wages, salaries or other remuneration. Seller 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 Seller is required to collect such value added tax or sales and use tax on behalf of any taxing jurisdiction, Seller will provide to Company invoices which separately state and clearly indicate the amount of tax, and Company will remit any such tax to Seller. Seller 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 Seller must collect value added tax or sales and use tax from Company, Seller 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, Seller 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 Seller 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 10(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 Seller. In addition, all taxes assessed by any taxing jurisdiction based on Seller 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 Seller. The parties will cooperate in good faith to minimize such tax liabilities to the extent legally permissible.
- (E) Seller and subcontractors will file such returns, reports or forms necessary for the payment of all taxes which Seller is required by law to file.
- (F) Seller 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 Seller to contest, any tax, fee or assessment, and Seller will use its best efforts in cooperating with Company in any such contest.

#### **Section 11. Warranty.**

- (A) Seller 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 Seller and Company, from the date of final written acceptance of the completed Work by Company as required for final payment under Section 9. For any breach of the above warranties, Seller will, immediately after receiving notice from Company, at the option of Company, and at Seller'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, Seller 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 Seller fails to repair or replace any defective Work in a timely manner, the Company may do so and Seller will reimburse Company for actual and reasonable expenses.

- (B) Seller warrants that any machinery, equipment, or process, the design of which is the responsibility of Seller, 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 Seller of its obligations under this Section 11(B).
- (C) In the event of a breach by Seller of its obligations under this Section 11, Company will not be limited to the remedies set forth in this Section 11, but will have all the rights and remedies permitted by the Contract and by law.
- (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 12. Independent Contractor.**

- (A) Seller is an independent contractor and not an employee or agent of Company. Company disclaims any right to control the manner of performance by Seller and Company will not control the manner of performance by Seller.
- (B) Seller has no authority to direct or control the performance of any employee of Company. Seller's role will be that of adviser and not of master to any Company employee.
- (C) Seller does not have any Company title and Seller is not eligible for Company benefits or employee plans.

**Section 13. Superintendence.**

Seller 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 Seller.

**Section 14. Subcontracts.**

Unless otherwise specified, Seller must obtain Company's written permission before subcontracting any portion of the Work. Except for the insurance requirements in Section 19, 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

Seller from its obligations to Company, including, but not limited to Seller's insurance and indemnification obligations. No subcontract or order will bind Company.

**Section 15. Environment, Health, Safety and Security.**

- (A) Seller 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, Seller shall promptly remove from said premises any person under the control of Seller 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) Seller 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, Seller 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.

**Section 16. Cleaning.**

Seller will at all times keep the Work site and the adjoining premises, driveways, and streets clean of rubbish caused by Seller'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 Seller does not attend to such cleaning immediately upon request, Company may cause such cleaning to be done by others and charge the cost to Seller.

**Section 17. Title and Risk of Loss.**

Unless otherwise agreed, Company will have title to, and risk of loss of, all completed and partially completed portions of the Work and materials delivered to and stored at the Work site which are intended to become a part of the Work. However, Seller will be liable for any loss or damage to the Work and/or the materials caused by Seller or its subcontractors, their agents, or employees, and Seller will replace or repair said Work or materials at its own cost to the complete satisfaction of Company. Seller will have risk of loss or damage to Seller's property used in the construction of the Work but which does not become a part of the Work.

**Section 18. Seller's Liability and Indemnity Obligations.**

SELLER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS COMPANY, ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, REPRESENTATIVES, SUBSIDIARIES AND AFFILIATED COMPANIES, (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL LIABILITIES, COSTS, CLAIMS, PENALTIES, FORFEITURES, CAUSES OF ACTION, SUITS AND THE COSTS AND EXPENSES INCIDENT THERETO (INCLUDING COSTS OF DEFENSE, SETTLEMENT, AND

ATTORNEYS' FEES, INCLUDING THE COSTS OF ATTORNEYS IN THE EMPLOY OF INDEMNITEES) WHICH INDEMNITEES MAY SUFFER, INCUR, BECOME RESPONSIBLE FOR OR PAY OUT AS A RESULT OF:

- (1) Failure by Seller to comply with any law, ordinance, regulation, rule or order, or with this Contract. This Section 18 includes, but is not limited to, fines or penalties by government authorities and claims arising from Seller's actual or asserted failure to pay taxes.
- (2) Violation or infringement of rights in any patent, copyright, proprietary information, trade secret or other property right caused or alleged to be caused by the use or sale of goods, materials, equipment, methods, processes, designs or information furnished by Seller or its suppliers. Should any Work become, or appear likely to become, the subject of a claim of infringement of a patent, copyright, or other proprietary right, Seller shall, at Company's option, either procure for Company the right to continue using such Work, replace same with equivalent, non-infringing Work, or modify the Work so that the use thereof becomes non-infringing provided that any such modification or replacement is of equal quality and provides equal performance to the infringing Work.

The preceding paragraph shall not apply to any Work manufactured to designs furnished and required by Company nor shall it apply to claims that the sale or use of a process or use of a combination of the Work supplied by Seller hereunder with another process or goods, if such process or other goods were not supplied by Seller and Seller's supplying of the Work hereunder does not constitute contributory infringement.

- (3) Injury to or death of persons (including employees of Company, Seller and Seller's suppliers) or from damage to or loss of property (including the property of Company) arising directly or indirectly out of this Contract or out of any acts or omissions of Seller or its suppliers. Seller's defense and indemnity obligations hereunder include claims and damages arising from non-delegable duties of Company or arising from use by Seller of construction, equipment, tools, scaffolding or facilities furnished to Seller by Company.
  - (4) Contamination, pollution, or public or private nuisance arising directly or indirectly out of this Contract or out of any acts or omissions by Seller, its suppliers or sub-suppliers.
  - (5) Damage to Company's property while such property is in Seller's custody or control, pursuant to Section 26.
- (B) Seller's defense and indemnity obligations shall apply regardless of whether the party to be indemnified was concurrently negligent, whether active or passively, excepting only where the injury, loss or damage was caused solely by the negligence or willful misconduct of, or by defects in design furnished by, the party to be indemnified. Seller's

defense and indemnity obligations shall include the duty to reimburse any attorneys' fees and expenses incurred by Company for legal action to enforce Seller's indemnity obligations.

- (C) In the event that any indemnity provisions contained herein are contrary to the law governing this document, then the indemnity obligations applicable hereunder shall be construed to apply to the fullest extent allowed by applicable law.
- (D) With respect to claims by employees of Seller, the indemnity obligations contained herein shall not be limited by the fact of, amount or type of benefits or compensation payable by or for Seller, its suppliers or sub-suppliers under any workers' compensation, disability benefits, or other employee benefits, acts or regulations. **WITH RESPECT TO CLAIMS AGAINST COMPANY BY SELLER'S EMPLOYEES, SELLER AGREES TO EXPRESSLY WAIVE ITS IMMUNITY, AS A COMPLYING EMPLOYER UNDER THE WORKERS' COMPENSATION LAW, FOR ANY AND ALL ACTS OF NEGLIGENCE, WHETHER PASSIVE OR ACTIVE, BUT ONLY TO THE EXTENT THAT SUCH IMMUNITY WOULD BAR OR AFFECT RECOVERY UNDER OR ENFORCEMENT OF THIS INDEMNIFICATION OBLIGATION.** This waiver shall apply to any immunity conferred upon an employer by any states' constitution of workers' compensation laws with respect to liability for claims asserted against a third party by a Seller's employee. With respect to the State of Ohio, this waiver applies to Section 35, Article II of the Ohio Constitution and Ohio Revised Code Section 4123. 74, as may be amended from time to time. The obligations in this Section are in addition to Seller's duty to provide insurance and shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable by Seller under any Workers' Compensation Act, U.S. Longshoremen's and Harbor Workers' Act, or any other employee benefit act.

### **Section 19. Insurance.**

- (A) Unless otherwise specified in the Contract, Seller will, during the progress of the Work, maintain the following types of insurance coverage:
  - (1) Worker's Compensation Insurance or qualification as a self-insurer to satisfy the laws of the states which have jurisdiction over Seller's employees. To the extent permitted by law, Seller's Worker's Compensation Insurer or Seller, if self-insured, agrees to waive rights of subrogation against Company;
  - (2) Employers' Liability Insurance for Bodily Injury per accident with limits of not less than \$1,000,000 and Bodily Injury by Disease with limits of not less than \$1,000,000 per policy;
  - (3) Commercial General Liability Insurance for bodily injury, personal injury and property damage, including coverage for products/completed operations and contractual liability, with combined limits of not less than \$5,000,000 per occurrence;

- (4) Automobile Liability Insurance covering use of all owned, non-owned and hired vehicles with minimum combined single limits of liability for bodily injury and property damage of not less than \$5,000,000 per occurrence; and
  - (5) Professional Liability Insurance with limits of not less than \$1,000,000.
- (B) Seller agrees that during the progress of the Work Company will be an additional insured on Seller's Commercial General Liability and Automobile Liability policies and that all Seller's insurance identified in Section 19(A) above will specifically indicate that coverage with respect to Company will be primary without right of contribution of any other insurance carried by or on behalf of Company. All of the above mentioned Seller insurance will be occurrence-based coverages. Seller may satisfy the limits of insurance required herein with any combination of primary and umbrella/excess insurance policies.
- (C) Upon Company's request, Seller will provide Company with written certification, reasonably acceptable to Company, of Seller's compliance with the requirements listed in Sections 19(A) and (B) above.
- (D) The requirements in this Section 19 are separate and distinct from any other obligations of Seller under this Contract.

**Section 20. Bonds.**

If required by Company, Seller 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. If such a bond is required, Company will reimburse Seller for its actual cost.

**Section 21. Liens.**

- (A) Seller, 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 Seller, 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 Seller, subcontractor, and materialmen agree that this provision waiving the right of Claims will be an independent covenant.
- (B) Seller will save and hold Company harmless from and against any and all Claims that may be filed by a subcontractor, materialman, or any other person and Seller will, at its

own expense, defend any and all actions based upon such Claims and will pay all charges of attorneys and all costs and other expenses arising from such Claims.

**Section 22. Intellectual Property Indemnification.**

Seller agrees to indemnify, defend hold harmless Company, its officers, directors, shareholders, employees, representatives, subsidiaries and affiliated companies, (collectively “Indemnitees”) from and against all liabilities, costs, claims, penalties, forfeitures, causes of action, suits and the costs and expenses incident thereto (including costs of defense, settlement, and attorneys’ fees, including the costs of attorneys in the employ of Indemnitees), which Indemnitees may suffer, incur, become responsible for or pay out as a direct or indirect result of any allegation, claim or proceeding involving any question of direct, contributing or indirect infringement of any intellectual property rights, including infringement of any patents or copyrights by reason of the nature, form or condition of any design, plan, drawing, specification, material, process, article or machine supplied by Seller in the performance of the Contract or by reason of the use, sale, offer to sale and/or import by Company of any such design, plan, drawing, specification, material, process, article or machine.

**Section 23. Assignment.**

Seller 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 Seller of any obligation under the Contract.

**Section 24. Termination of Contract by Company.**

- (A) Should Seller 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 Seller’s right to proceed with the Work by written notice to Seller. 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 Seller. In such case Seller will not be entitled to receive any further payments until the Work is finished. If the unpaid balance of the Contract price exceeds Company’s cost of finishing the Work, including compensation for additional managerial and administrative services, such excess will be paid to Seller. If such Company’s cost will exceed such unpaid balance, Seller will be liable for and will pay the difference to Company.
- (B) Company may, for its own convenience, terminate Seller’s right to proceed with any portion or all of the Work by written notice to Seller. Such termination will be effective in the manner specified in such notice, will be without prejudice to any claims which Company may have against Seller, and will not affect the obligations and duties of Seller under the Contract with respect to portions of the Work not terminated.

- (C) On receipt of notice under Section 24(B), Seller 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 materials, facilities, and supplies in connection with the performance of the Work,
  - (2) unless otherwise directed by Company, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Company; and
  - (3) 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 24(B), Seller will be paid a pro rata portion of the compensation in the Contract for any portion of the terminated Work already performed, including material and services for which it has made firm contracts which are not canceled, it being understood that Company will be entitled to such material and services. Upon determination of the amount of said pro rata compensation, Company will promptly pay such amount to Seller upon delivery by Seller of the releases of liens and affidavit, pursuant to Section 9(E).

**Section 25. Confidentiality.**

- (A) All data and other information of every kind, whether expressed in writing or otherwise, including information of a technical, engineering, operational or economic nature, and including physical embodiments of such data and information, disclosed or revealed at any time to Seller by Company, learned at any time by Seller by observing Company's facilities, or made or developed by Seller in the course of performing the Work for Company under this Contract (all called "Information") will be:
- (1) received and maintained in strict confidence by Seller and will not be disclosed, directly or indirectly, by Seller to any related or unrelated party whatsoever; and
  - (2) used by Seller 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 Seller and reduced to writing or other document form by Seller 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 Seller; or
- (3) Information which Seller 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 25, Seller 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. Seller may not reveal to any party whatsoever without Company's express written approval that Seller is performing services for Company or the character of such services.

If Seller believes that any of the exclusions set forth in Subsections 25(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 25, Seller 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 Seller 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. Seller 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) Seller will do the following as part of Seller's compliance with the obligations of confidentiality, limited use and non-disclosure:
- (1) Seller may reveal Information only to Seller's employees, but only when and to the extent necessary for Seller to perform the Work requested by Company, and Seller will advise all such employees to whom Information is disclosed of the obligations imposed on Seller.
  - (2) Seller 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 Seller with the legend "Confidential - Property of Alcoa Inc." or "Confidential - Property of (name of subsidiary or affiliate of Alcoa Inc.)" as the case may be, if they are not already so marked and Seller will not reproduce, copy or photograph any such document or other medium without the prior written approval of Company. Seller will deliver

to Company all documents, media or tangible property made or received by Seller which contain Information upon notice from Company requesting the delivery of such documents, media or other tangible property.

- (D) Seller will take the following safeguards for all tangibles as may be provided to Seller, or made by Seller 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 Seller's premises or by Seller's employees, officers, agents and directors who do not have a need to observe such in order for Seller to perform the Work for Company.
  - (4) maintain such tangibles in the exclusive possession of Seller 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) The obligations imposed by this Section 25 will continue in effect for a period of ten (10) years from the date on which the Work was last performed by Seller for Company, and will survive any termination of this Contract by either party.
- (F) 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.
- (G) Seller will enter into agreements to effectuate the provisions of this Section 25 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 Seller if requested by Company.

#### **Section 26. Export of Information.**

Notwithstanding any other provision or understanding between Company and Seller, Seller 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 25(E), Seller may not export any Information or

disclose any Information to any such above-mentioned person until Seller has procured the licenses, assurances and approvals, if any, necessary under such laws or regulations.

**Section 27. 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 Seller by Company for performance of the Work or made by Seller 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 Seller to Company. All Company property, while in Seller's control, shall be held at Seller's risk, free of all liens, encumbrances or security interests of Seller or third parties, and shall be kept insured by Seller at Seller's expense in an amount equal to replacement cost with loss payable to Company. All property of the company is subject to removal by Company at any time, and to return upon Company's request.

**Section 28. 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 Seller without obtaining written approval from Company.

**Section 29. Exclusion of Certain Persons.**

Seller will not, without the prior written consent of Company, permit any person other than officers, employees, or representatives of Company, Seller, or its subcontractors to enter upon the Premises. Seller 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 any person whose character is such that his presence on the Premises might obviously be detrimental to Company's interests. Company will have the right to bar or remove from its Premises any such individual after appropriate notice has been given to Seller.

**Section 30. Equal Employment Opportunity.**

Unless this Contract is exempted by law, Seller 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, Seller will furnish to Company an executed Certificate of Nonsegregated Facilities.

**Section 31. Electronic Commerce.**

At Company's request, Company and Seller will facilitate business transactions by electronically transmitting data. Any data digitally signed pursuant to this section and electronically transmitted will be as legally sufficient as written, signed, paper documents exchanged between the parties, notwithstanding any legal requirement that the data be in writing or signed. Each authorized representative of a party will adopt a unique, verifiable digital identification consisting of symbols or code to be transmitted with each transmission. Use of the digital identification will be deemed for all-purpose to constitute a "signature" and will have the same effect as a signature on a written document.

### **Section 32. Import/Export Compliance.**

If any Work is to be delivered into any other country, Seller 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 33. Gratuities.**

Company may, by written notice to the Seller, terminate the right of the Seller to proceed or continue under this Contract if it is found that gratuities (in the form of entertainment, gifts or otherwise), were offered or given by the Seller, or any agent or representative of the Seller to any officer or employee of the Company with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of this Contract. In the event this Contract is terminated as provided in this provision, Company shall be entitled to pursue the same remedies against the Seller as it could pursue in the event of a material breach by Seller as provided in Section 24(A) hereof. The rights and remedies of Company provided in this or any other article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

### **Section 34. Audit Rights**

Seller 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 Seller.

### **Section 35. Miscellaneous Provisions.**

- (A) This Contract sets forth the entire agreement between the parties as to the subject matter of this Contract, and supersedes all prior agreements, commitments, representations, writings and discussions between them, whether written or oral, with respect to the subject matter of this Contract. 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.
- (C) If any provision of this Contract or its application to any person or circumstance is adjudged 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) Seller warrants that it will comply with all foreign, federal, state and local laws and regulations.
- (F) Seller 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.
- (G) In no event shall Company be liable for consequential, incidental or special damages of any kind or for damages in excess of the price set forth in this Contract for the Work on which such claim is based. Any action on any claim against Company must commence within one year after the cause of action has accrued or the right to bring such action will be deemed to have been waived by Seller.
- (H) Company may, at any time, in writing, make changes to the general scope of this Contract, and Seller will continue performance of this Contract as so changed. If any such change causes an increase or decrease in the cost of, or time required for, the performance of Seller's obligations under this Contract, an equitable adjustment will be made to the price or delivery schedule, or both, and this Contract will be modified in writing accordingly.

