



Alcoa Howmet
a division of
Alcoa Power and Propulsion

TERMS AND CONDITIONS FOR WASTE DISPOSAL 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 items, 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) “Non-Conforming Waste Material” means any waste material provided by Company to Seller which contains a constituent or has a characteristic or property that is not disclosed in the material’s description and which (i) materially increases risk to human health or the

environment or (ii) is not permitted to be treated, stored or disposed of at the designated, storage or disposal facility.

- (H) “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.
- (I) “Revocation of Acceptance” or “Revoke(d) Acceptance” means provision by Seller and receipt by Company, within thirty (30) days after Seller takes possession or control of the waste materials at their present location on the Premises, of written notice of Seller’s rejection of the waste materials and documentation proving, to Company’s satisfaction, the status of the waste materials as Non-Conforming Waste Materials.

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.
- (E) Seller acknowledges that the site where the Work is to be performed may bear or contain Hazardous Substances. Company agrees to use reasonable efforts to advise Seller at the commencement of and during the term of this Contract of Hazardous Substances actually known by Company to be located in or on the site where the Work is being performed on the Premises. Notwithstanding such reasonable efforts of Company, Seller discharges and releases Company from any and all liability, directly or indirectly resulting from the failure of Company to give any, or a more specific, warning with respect to Hazardous Substances, whether known or unknown, located on the Premises or from the inadequacy of any warning. Notwithstanding any other term or condition contained in the Contract, Seller agrees to indemnify, defend and hold harmless Company, its present and future officers, directors, shareholders, employees, representatives, agents, successors and

assigns from and against all liabilities, costs (including investigatory 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 employed by Company), which Company, its present and future officers, directors, shareholders, employees, representatives, agents, successors and assigns, or any of them may suffer, incur, become responsible for or pay out as a direct or indirect result of Seller's employees being exposed to or coming into contact with Hazardous Substances.

Section 3. 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) 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.
- (C) Any laboratory tests performed under the Contract, not including tests performed by Seller in order to test the conformity of the waste materials to the specifications, will be conducted in a laboratory approved by Company. Unless otherwise specified by Company, all tests will be performed in accordance with the then required standard methods of the appropriate federal, state or local regulatory agency, or in the absence thereof, the American Society of Testing Materials standards governing the materials tested. Should a question arise as to which agency's standards are appropriate, Company will determine which agency's required standard test method will be followed.
- (D) If Company determines that any subsequent tests are necessary because of Seller's failure to properly perform any test or to provide tools, vehicles, containers and equipment which are free from Hazardous Substances, such tests will be performed at Seller's expense.

Section 4. Materials Furnished By Company.

Unless the Contract otherwise expressly provides, no materials, supplies, equipment, labor, services or any other things required for the performance of the Work are to be furnished by Company.

Section 5. Transfer Of Waste And Title.

- (A) Title, risk of loss and all other incidents of ownership to waste materials will be transferred from Company and vested in Seller at the time Seller takes possession or control of the waste materials at their present location on the Premises. If, however, the

waste materials are to be transported to a waste treatment, storage or disposal facility owned or operated by a third party, risk of loss of the waste materials will be transferred from Company and vested in Seller at the time Seller takes possession or control of the waste materials at their present location on the Premises. In such case, Seller will ensure and provide Company with prior written certification that title, risk of loss and all other incidents of ownership to the waste materials will be transferred from Company and/or Seller and vested in said third party at the time said third party takes possession or control of the waste materials from Seller.

- (B) Seller may Revoke Acceptance of Non-Conforming Waste Material. A Revocation of Acceptance will operate to revest title, risk of loss and all other incidents of ownership in Company at the time Seller relinquishes possession or control of the waste materials as provided for under Section 5(D); provided, however, that Seller will take all necessary steps to appropriately protect the Non-Conforming Waste Material and protect human health and the environment.
- (C) Failure to Revoke Acceptance of any Non-Conforming Waste Material will be considered to be a waiver by Seller of any right to Revoke Acceptance of Non-Conforming Waste Material and to make a claim against Company for any liability resulting from Non-Conforming Waste Material. Seller's exclusive redress for Revocation of Acceptance of Non-Conforming Waste Material will be limited to the remedies provided for under Section 5(D).
- (D) Within a reasonable time, not to exceed ten (10) days after Revocation of Acceptance, Seller will prepare for transportation and will return to Company any Non-Conforming Waste Material for which Seller has Revoked Acceptance, unless the parties agree to some alternative lawful manner of disposition of Non-Conforming Waste Material. If Non-Conforming Waste Material is to be transported to a waste treatment, storage or disposal facility owned or operated by a third party, Seller will ensure and provide Company with prior written certification that title, risk of loss and all other incidents of ownership to Non-Conforming Waste Material will be transferred from Company and vested in the third party at the time the third party takes possession or control of Non-Conforming Waste Material from Seller. Company will pay Seller its reasonable and necessary actual expenses and charges for handling, loading, preparing, transporting, storing and caring for Non-Conforming Waste Material returned to Company under this Section 5.

Section 6. Prior Approval Of Transportation And Treatment, Storage Or Disposal Facilities

Seller may not, without the prior written consent of Company, cause the transportation of the waste materials by any other transporter or using any other method of transportation than that specified in the Contract. Seller may not, without the prior written consent of Company, cause the treatment, storage or disposal of the waste materials at any facility other than that specified in the Contract.

Section 7. 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 7.
- (B) If a delay is not caused by or contributed to by any act or omission of Seller, the time for completion may 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) 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.
- (D) 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.
- (E) Any request for extension of time or compensation under this Section 7 must be made in writing within five (5) working days from the date the delay commences.
- (F) 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 8. Changes.

Company may, at any time, by written notice, make changes in the scope of Work and specifications of the Contract, omit certain Work or require additional Work to be performed by Seller. Immediately upon receipt of Company's notice, Seller will provide written notice if Seller is unable, does not possess the expertise, or is not legally permitted to perform the additional Work. Any changes in the price or schedule under the Contract necessitated by such changes will be made only by Company's written change order signed by both an authorized representative of Seller and an authorized representative of Company.

Section 9. Payments.

- (A) Payment will be made by Company after receipt of accurate invoice(s), in such amounts and at such times as specified in the Contract. All invoices will be mailed to Company's location Accounting Manager unless otherwise specified in the Contract.

- (B) If Seller has utilized subcontractors or material suppliers (including, but not limited to, materialmen), Company's final payment will not become due until Seller has delivered to Company an Company supplied release of lien document releasing each lien arising out of the Work performed or materials supplied under the Contract. Such release to be delivered by Seller will be the original, executed and notarized release. In lieu of the release of lien document, Company may, in Company's sole discretion, accept receipts marked paid in full for all Work performed or materials supplied under the Contract. Seller will also complete a Company-supplied affidavit listing all persons who might otherwise be entitled to file, claim, or maintain a lien of any kind or character. This affidavit shall contain an averment that all persons have been paid in full for all Work performed or materials supplied under the Contract. If any person(s) refuses to furnish a release or receipt marked paid in full for all Work performed or materials supplied under the Contract, then Company may require Seller to furnish a bond satisfactory to Company indemnifying Company against any claim or lien.
- (C) If, after all payments are made by Company, any lien or claim remains unsatisfied, Seller will reimburse Company all monies that Company may be compelled to pay in discharging such a lien or claim (including costs of defense, settlement and attorneys' fees, including the costs of attorneys employed by Company).
- (D) Payments due may be withheld by Company for the following reason(s): (i) defective Work not remedied; (ii) liens or other claims filed; (iii) reasonable evidence indicating probable filing of liens or other claims; (iv) failure of Seller to make payments properly to its subcontractors and material suppliers (including, but not limited to, materialmen); (v) failure of Seller to perform any of its obligations under the Contract; or (vi) for reasonable cause(s). Prompt payment will be made after Company is satisfied that the reason(s) for withholding payment is corrected. If the reason(s) for withholding payment is not corrected by Seller to Company's satisfaction, Company may correct such reason(s) at Seller's expense.
- (E) Acceptance by Seller of final payment pursuant to Section 9(B) will constitute a waiver, release and discharge of any and all claims and demands of any kind or character whatsoever which Seller then has, or can thereafter acquire against Company, its successors and assigns, for or on account of any matter or thing whatsoever arising out of, or in any manner connected with, the performance of the Contract. However, payment of the final payment by Company shall not constitute a waiver, release, or discharge of any claims or demands which Company then has, or can thereafter acquire, against Seller, its successors and assigns, for or on account of any matter or thing whatsoever arising out of, or in any manner connected with, the performance of 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 expressly represents and warrants that Seller will give Company written notice of any notice of noncompliance or withdrawal of approved transportation, or treatment, storage or disposal facility status no later than five (5) days after receipt by Seller or subcontractors for any transporter or any facility where the treatment, storage or disposal of the waste materials may occur.
- (B) Seller warrants that, during the term of the Contract, no Hazardous Substance will be spilled, released, discharged, disposed of, placed or otherwise caused to be located in the air, soil, water or groundwater in, under or upon the Premises and no waste materials will be spilled, released, discharged, disposed of, placed or otherwise caused to be located in the air, soil, water or groundwater in, under or upon any location except for the Company-approved treatment, storage or disposal facility. Seller agrees to indemnify, defend and hold harmless Company, its present and future officers, directors, shareholders, employees, representatives, agents, successors and assigns from and against all liabilities, costs (including investigatory, remedial and monitoring costs), claims, penalties, forfeitures, causes of action, suits and the costs and expenses incident thereto (including costs of defense, settlement and attorneys' fees, including costs of attorneys in the employ of Company) which Company, its present and future officers, directors, shareholders, employees, representatives, agents, successors and assigns, or any of them may hereafter suffer, incur, become responsible for or pay out as a result of any suit, administrative proceeding, citation, remediation demand, or judgment by any person or entity arising out of the spillage, release, discharge, disposal, or placement of any Hazardous Substance in or upon the air, soil, water or groundwater in, under or upon the Premises directly or indirectly caused by or resulting from, in whole or in part, by any act or omission of Seller or subcontractor, their representatives, agents, employees and invitees as a consequence of or in any manner connected with or arising out of performance of the Contract.
- (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. 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 17, all subcontracts and orders for the purchase or rental of supplies, materials or equipment 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 14. 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.
- (C) In the event of any spill, discharge, release or threatened release of a Hazardous Substance in, under or upon the Premises caused by the action or inaction of Seller or any of its subcontractors or any of their representatives, agents, employees or invitees, or in the event of any spill, discharge, release or threatened release of the waste materials in, under or upon any location except for the Company-approved treatment, storage or disposal facility, Seller will immediately notify Company and will, at Seller's sole expense, (i) at Company's sole discretion, properly notify federal, state and local authorities in accordance with Applicable Environmental Law, and (ii) take timely action to control and clean-up the release or threatened release so that any hazard or potential hazard to human health, life or the environment will be expeditiously controlled and eliminated. Company reserves the right to approve both the method and the means of clean-up for any spill, discharge, release or threatened release covered under this Section 14(C).

Section 15. Cleaning.

- (A) Seller's tools, vehicles, containers and equipment shall be free from any and all Hazardous Substances upon introduction of said tools, vehicles, containers and equipment onto the Premises except as expressly permitted under Section 14(B).
- (B) Seller's tools, vehicles, containers and equipment shall be free from any and all Hazardous Substances upon removal of said tools, vehicles, containers and equipment from the site where the Work is being performed except for properly contained waste materials to be disposed of by Seller at request of Company pursuant to the Contract.
- (C) 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 16. 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 DEATH OR BODILY INJURY TO ANY PERSON, DESTRUCTION, LOSS OR DAMAGE TO ANY PROPERTY, REAL OR PERSONAL, CONTAMINATION OF OR ADVERSE EFFECT ON THE ENVIRONMENT, OR VIOLATION OR ALLEGED VIOLATION OF FEDERAL, STATE, OR LOCAL LAW, RULE, REGULATION, ORDINANCE, ORDER, DECREE, DECISION, RESTRICTION, PERMIT OR LICENSE, CAUSED BY OR RESULTING FROM THE NEGLIGENCE OR WILLFUL ACTS OR OMISSIONS OF SELLER, SUBCONTRACTORS OR MATERIALMEN UNDER THE CONTRACT, OR THE REPRESENTATIVES, AGENTS, EMPLOYEES OR INVITEES OF ANY OF THEM, AS A CONSEQUENCE OF OR IN ANY MANNER CONNECTED WITH PERFORMANCE OF THE CONTRACT, WHETHER ANY ACT, OMISSION OR NEGLIGENCE OF ANY INDEMNITEE ACTUALLY, OR ALLEGEDLY CONTRIBUTED THERETO. **COMPANY AND SELLER EXPRESSLY INTEND BY THE FOREGOING THAT SELLER WILL INDEMNIFY AND PROTECT INDEMNITEES FROM THE CONSEQUENCES OF ANY OF INDEMNITEES' NEGLIGENCE, INCLUDING WITHOUT LIMITATION ALL INSTANCES IN WHICH INDEMNITEES' NEGLIGENT ACTIONS, INCLUDING THE CONCURRENT NEGLIGENCE OF INDEMNITEE(S), WHETHER ACTIVE OR PASSIVE, ACTUALLY OR ALLEGEDLY**

CAUSED OR CONTRIBUTED TO, INJURY, DEATH, DESTRUCTION, LOSS OR DAMAGE; PROVIDED THAT NOTHING CONTAINED IN THE CONTRACT WILL OBLIGATE SELLER TO INDEMNIFY INDEMNITEES FROM ANY CLAIM WHICH MAY ARISE FROM THE SOLE NEGLIGENCE OF THE INDEMNITEES. THIS INDEMNIFICATION PROVISION IS IN ADDITION AND CUMULATIVE TO ANY OTHER RIGHT OF INDEMNIFICATION OR CONTRIBUTION WHICH ANY OF THE INDEMNITEES MAY HAVE AT LAW, IN EQUITY, OR OTHERWISE, AND WILL SURVIVE COMPLETION OF THE CONTRACT.

Section 17. 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; and
 - (4) Automobile Liability Insurance covering use of all owned, non-owned and hired vehicles with minimum combined single limits of liability for bodily injury and property damage of not less than \$5,000,000 per occurrence; and
 - (5) Pollution Liability Insurance for bodily injury, personal injury and property damage, with combined limits of not less than \$5,000,000 per occurrence.
- (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 17(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 17(A) and (B) above.

- (D) The requirements in this Section 17 are separate and distinct from any other obligations of Seller under this Contract.

Section 18. 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 19. 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 20. 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 21. 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 21(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 21(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 22. Compliance with Terms and Conditions.

Company's failure at any time, or from time to time, to enforce or require the strict keeping and performance by Seller of any of the terms and conditions of the Contract will not constitute a waiver by Company of such terms or conditions, and will not affect or impair such terms or conditions in any way, or Company's right at any time to avail itself of such remedies as it may have for any breaches of such terms or conditions.

Section 23. 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 24. 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 25. 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 26. 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 21(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 27. 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 28. 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 29. 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.
- (I) 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.