



## GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION CONTRACTS

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### 1. DEFINITIONS:

A. Unless the context otherwise requires:

"Approval" means the approval of Owner.

"As directed," "as required," "acceptable," "satisfactory" and similar terms refer by or to Owner.

"Compensation" means the consideration to be paid to Supplier for the proper performance of the Work.

"Contract" means the contract of which these General Conditions form a part and all other documents incorporated by reference herein or therein, as amended from time to time.

"Supplier" means the individual, corporation, partnership, joint venture, association or other entity that has undertaken to carry out the Work and includes Supplier's successors, permitted assigns and legal representatives.

"Day" means a calendar day without exclusion of any kind.

"Or equal" means an Owner-approved equivalent.

"Owner" includes its successors, assigns and legal representatives.

"Subcontractor" means any individual, corporation, partnership, joint venture, association or other entity that carries out a portion of the Work on behalf of Supplier

under a subcontract and to whom Owner has consented pursuant to these General Conditions.

"Supplier" or "vendor" means Supplier or his suppliers or subcontractors, as the case may be.

"Work" means all things to be provided, supplied, made, erected or done by Supplier pursuant to this Contract and includes all variations permitted by Owner under these General Conditions.

B. Unless the context otherwise requires, (a) words in the singular include the plural and vice versa, (b) words of any gender (masculine, feminine or neuter) include each other gender, and (c) a reference to any article, paragraph or clause is a reference to such article, paragraph or clause in these General Conditions.

C. Headings are included for purposes of easy reference and shall not affect the meaning or interpretation of this Contract.

### 2. REPRESENTATIONS:

A. Supplier represents and warrants that he has visited the project site and has diligently acted to familiarize himself with (a) the project site, the adjacent premises, the approaches to it and the facilities or lack thereof for delivering, handling and storing materials and equipment at such location, (b) Owner's current

operations at or near the project site, (c) the means of access and storage within the project site, (d) any construction work which may be carried on during the term of this Contract by Owner or by other suppliers, (e) Owner's current labor agreements in effect at the project site, and (f) all other conditions under which the Work is to be performed. Supplier further represents and warrants that he has correlated these observations and the information he has gained as a result of his investigations with the requirements of this Contract. Supplier shall corroborate the accuracy of any information furnished by Owner concerning the project site, including, without limitation, legal descriptions, surveys describing physical characteristics, legal limitations, utility locations and soil tests, within twenty (20) days of receiving such information and Supplier shall notify Owner of any inaccuracies. Supplier shall not be entitled to any additional compensation or damages of any kind if he fails to corroborate such information and to so advise Owner of inaccuracies.

B. Supplier represents and warrants that he knows the applicable federal, state and local laws, ordinances and regulations, including, without limitation, those concerning prefabricated or pre-assembled materials, and is fully acquainted with local labor conditions and any agreements which will or which could affect his ability to perform the Work. Supplier shall make no claim on account of the foregoing.

C. Provided he strictly complies with the notification requirements of Paragraph D of this Article 2, Supplier will be entitled to an adjustment of the Contract Compensation under Article 16 "Changes" and of the time for performance of the Work under Article 17 "Delays," if, after undertaking diligent inquiry before executing this Contract, he encounters (a) subsurface or latent physical conditions at the project site differing materially from those indicated in this Contract, (b) concealed conditions in an existing structure at the project site differing materially from the conditions indicated in this Contract, or (c) unknown physical conditions, subsurface or otherwise, at the project site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

D. If Supplier encounters a condition such as is described in Paragraph C of this Article 2, he shall not disturb the condition and shall promptly notify Owner that he has encountered the same. Upon receiving such notification, Owner will investigate the condition and provide written direction to Supplier as to how he should proceed with respect to that portion of the Work affected by the condition.

### 3. SUPPLY OF ITEMS:

Owner will supply those services, sites, materials and equipment specified herein as "Owner-furnished Items." Supplier shall supply and pay for all other labor, tools, implements, equipment, machinery, utilities, materials, necessary supervision and any other item or service required to perform the Work. All materials incorporated in the Work shall be new and of the first quality and description of their respective kinds, unless Owner specifies otherwise in writing.

### 4. PERFORMANCE OF WORK:

A. Owner will issue a written "Notice to Proceed with Field Work" setting forth the Contract starting date for Work at the project site. Supplier shall commence Work at the project site not later than the date specified in Owner's Notice to Proceed with Field Work. Supplier confirms that the time set forth for completion of the Work, including any interim completion dates, is reasonable and represents that he is capable of completing the Work within such time in strict accordance with the requirements set forth in this Contract. Should Supplier plan to complete the Work or any portion of it in advance of the dates set forth in this Contract, he may do so, but in no event shall Owner be liable to Supplier for or on account of his inability to finish early.

B. Supplier shall perform the Work in the best and most workmanlike manner, using qualified, efficient and careful workers, in strict conformity with generally accepted standard practices unless a higher standard is required by the specifications, and in strict accordance with the drawings and specifications, or any modifications thereto as approved in writing by Owner, and as required to conform to any applicable orders or regulations of any lawful body having the right to require that the Work should be performed in the manner specified by such body.

C. The Work may form only a part of a comprehensive scheme of development, and failure of Supplier to perform the Work within the period required may delay other work or seriously affect other commitments and programs of Owner. If this Contract provides that Owner may assess liquidated damages for any failure of Supplier to complete the Work or any portion thereof within the times set forth in this Contract, such liquidated damages shall not be deemed to be in lieu of Owner's actual damages for or on account of (a) additional or extended costs of administering this Contract or any related separate contract, (b) Owner's liability to separate suppliers, (c) amounts which Supplier is required to pay Owner pursuant to any indemnity provisions of this Contract, or (d) any sums which Owner expends to remedy any default of Supplier hereunder. Owner shall compute damages and costs separately and, together with any liquidated damages, may deduct

the same from any amounts due or to become due Supplier.

D. Supplier shall furnish sufficient forces, construction plant and equipment and shall work such hours, including night shifts, Saturdays, Sundays and holidays as required to insure completion of the Work within the time specified in the specifications and Supplier's Performance Schedule. Time is of the essence of this Contract and Supplier shall complete each phase of the Work in strict accordance with the requirements of the specifications and Supplier's Performance Schedule.

E. All machinery and equipment owned or controlled by Supplier which is proposed to be employed by him on the Work shall be of a type and of sufficient size, quantity and condition to produce a satisfactory quality of Work within the time provided for the completion of the Work.

F. Should Supplier at any time be delayed in the performance of the Work by reason of lack of materials or equipment to be furnished by Supplier, Owner reserves the right to purchase and supply such materials or equipment to Supplier and the cost thereof shall be deducted from the amounts becoming due to Supplier hereunder.

G. Prior to commencement of Work at the project site, Supplier shall furnish a written schedule of his working hours per day and per week, which schedule shall not be changed without twenty-four (24) hours prior written notice to Owner. If Supplier must interrupt existing plant utilities to complete the Work, such interruption shall be done at a time designated by Owner. If Owner designates that the interruption take place on overtime, Owner will bear only the premium portion of the labor costs associated with such authorized overtime.

H. In the event Owner desires to expedite completion of any phase of the Work earlier than the dates set forth in the specifications and Supplier's Performance Schedule and requests in writing that overtime be worked, Owner will bear only the premium portion of the labor costs associated with such authorized overtime. In no event shall Owner be liable for home office overhead, supervision costs, commissions, profit or other costs and expenses of any kind whatsoever, including "impact" costs or any costs associated with lost efficiency or productivity incurred or alleged to have been incurred in connection with such overtime work.

I. Supplier shall promptly notify Owner, in writing, of any facts or conditions which would affect Supplier's ability to meet the completion dates for each phase and/or activity of the Work. If Supplier fails to maintain the progress necessary for the completion of each phase and/or activity as required by the terms of this Contract, Owner shall have all of the rights and remedies provided by law and provided by this Contract, including, without

limitation, those set forth in Article 23 "Failure by Supplier." Notwithstanding such rights and remedies, upon any such failure, Supplier shall, upon written notice by Owner and at no additional cost to Owner, work such hours, including night shifts, Saturdays, Sundays and holidays, and furnish such additional personnel, construction plant and equipment for such a period of time as Owner deems necessary to regain and thereafter maintain the progress required by this Contract. If Supplier fails to comply with Owner's notice to work overtime or to furnish additional personnel, construction plant or equipment, or fails to regain and thereafter maintain the progress required by this Contract, Owner shall have all of the rights and remedies provided by law and provided by this Contract, including, without limitation, those set forth in Article 23 "Failure by Supplier."

J. A specific storage area on the project site will be assigned to Supplier. Additional space, if desired by Supplier, shall be furnished by Supplier at his expense off the project site. Supplier may be asked to unload from railroad cars or trucks all Owner-furnished Items delivered to the project site during the course of the Work and, when off-loaded, Supplier shall verify the contents of all such deliveries against any bills of lading accompanying the same and, in any event, furnish a written inventory of such deliveries to Owner. Promptly after Supplier commences on-site Work, he shall check out and remove all Owner-furnished Items in Owner's storage areas at that time. In the event Supplier does not remove the Owner-furnished Items, Owner shall have the option to delivery the same to Supplier's area at Supplier's sole risk and expense or allow the same to remain in place at Supplier's sole risk and expense. All materials and equipment shall be stored by Supplier so as to insure the preservation of their quality and fitness for the Work and shall be located so as to facilitate prompt inspection. Supplier shall promptly notify Owner in writing of any damage to Owner-furnished Items discovered during unloading, uncrating, storage or assembling operations.

K. Where specified that materials, products, processes, systems, equipment or the like are to be installed or applied in accordance with manufacturer's instructions, directions, specifications or words to that effect, it shall be construed to mean that the quality of said application or installation shall be not less than that obtainable by strict conformity with printed instructions furnished by the manufacturer of the material concerned for use under conditions similar to those at the project site, unless otherwise specified. Where the materials, products, systems or equipment are furnished by Supplier, no less than three (3) copies of such instructions shall be furnished to Owner before the application or installation commences. Supplier shall

also provide Owner's expediting representatives such information as they may request concerning Supplier's program and schedule for performing any off-site fabrication or materials procurement activities in connection with the Work and shall accord said representatives full cooperation for their review, observation and inspection of any of Supplier's engineering, materials acquisition and production activities at Supplier's facilities, as well as at the facilities of Supplier's suppliers and subcontractors, regardless of tier.

L. Supplier shall confine his equipment and the storage of materials to the area designated by Owner and shall not at any time encumber the premises with excess materials or equipment no longer required to complete the Work.

M. Supplier shall use only established streets or, in the absence thereof, may, at Supplier's expense, and with Owner's prior written consent, construct temporary roadways. Vehicles shall not be loaded beyond the capacity prescribed by any national, state or local law, regulation or ordinance. When it is necessary to cross curbs or sidewalks that will not be removed, protection against damage shall be provided by Supplier and any damaged roads, curbs, sidewalks or signs shall be repaired at Supplier's expense.

N. Unless otherwise agreed, upon completion or termination of the Work, Supplier shall promptly remove all of his equipment and supplies from the project site, failing which Owner shall have the right to remove and place in storage such equipment and supplies at Supplier's sole risk and expense.

#### 5. RESPONSIBILITY, COMPLETION AND GUARANTEE OF WORK:

A. Until such time as the Work is completed and accepted by Owner, Supplier shall be responsible for the Work, for all items to be furnished by Supplier for incorporation into the Work, and for all Owner-furnished Items that have been delivered or checked out to Supplier. Supplier shall, at his sole expense, promptly repair, restore or replace to Owner's satisfaction all damage to, or destruction or loss of, the Work or such items resulting from any cause whatsoever. Supplier shall also, at his sole expense, promptly repair, restore or replace any real or personal property, including tools and equipment in the custody of Owner or other suppliers, which Supplier or his subcontractors or suppliers or their respective employees, agents or invitees may damage, destroy or lose.

B. If the Work is defective or otherwise fails to comply with the plans and specifications, or if Supplier fails in any way to perform according to this Contract, Owner may require Supplier to remedy such defect or failure at no expense to Owner; Owner may remedy such defect or failure and deduct the cost thereof from any amount due or to become due to Supplier and recover any such excess

costs from Supplier; or at Owner's election, Owner may exercise any other remedies Owner may have under this Contract or at law. Costs to remedy a defect or failure shall include repairs to other work damaged by such defect or failure or damaged by repairing the same.

C. Supplier hereby guarantees the Work to be performed hereunder against defects in materials and workmanship, other than Owner-furnished Items, for a period of one (1) year after the date of acceptance as set forth in the "Certificate of Completion and Acceptance," and, with respect to any portion of the Work which has been repaired by Supplier after such date of acceptance, for a period of one (1) year from the date of completion of such repair. Supplier shall immediately, after receipt of written notice thereof, make good any such defects in materials or workmanship which may develop during such guarantee period and any damage to other work caused by such defects or repairing the same, all at Supplier's expense. Supplier shall assign any and all rights under any warranties he may have received or be entitled to from vendors of the materials and equipment incorporated in the Work, to the extent such warranties extend beyond the period of Supplier's guarantee hereunder, as requested by Owner.

D. Before completion of the entire Work, Owner may desire to place part of the Work in service. Owner will first inspect the Work, making notations of incomplete or unacceptable items which are found at that time, and furnish Supplier with a copy of such notations. Owner may then place such Work in service or make it available to other suppliers so as to allow them to perform their work. Such use of part of the Work shall not relieve Supplier from any of his obligations under this Contract or his responsibilities to complete the Work as scheduled and to correct unacceptable portions as soon as possible, nor shall retained monies be released until all Work is completed. Supplier shall receive no additional compensation beyond the Contract Compensation for completion of the Work. Supplier shall allow proper access to the completed portions of the Work for the purposes described herein.

#### 6. WORK BY OWNER AND OTHERS:

To the extent reasonably practicable, Supplier shall perform the Work in a manner which avoids interference with Owner's business or work being undertaken by Owner or by others. Where the Work is one part of a project being undertaken by Owner, performance hereunder may be dependent upon work on other parts of the project by Owner or other suppliers on and about the project site during the time Supplier is performing the Work. If part of the Work depends upon the proper execution or results of construction or operations of Owner or a separate supplier, Supplier shall, before proceeding with that part of the Work, promptly notify

Owner in writing of any apparent defects or discrepancies in such other construction or operations which would render it unsuitable for such proper execution or results. Failure to so notify Owner shall constitute Supplier's acknowledgment that the completed or partially completed work of Owner or Owner's separate suppliers is fit and proper to facilitate and support Supplier's Work except as to defects not then reasonably discoverable. If Supplier is unjustifiably delayed at any time during his performance of the Work by the acts or omissions of another supplier under separate contract with Owner, Supplier shall make no claim for additional compensation on account of such but may seek compensation directly against such other supplier if consent for direct recovery is contained in that supplier's agreement with Owner. Supplier hereby consents to be directly liable to other suppliers under separate contract with Owner to the extent that Supplier delays or interferes with the work of such other suppliers.

#### 7. CLEANING OF SITE:

A. Supplier shall at all times keep the project site free from accumulations of waste materials or rubbish caused by his performance of the Work and shall maintain his working and storage areas in a reasonably clean and nonhazardous condition. Upon the completion of the Work, Supplier shall remove his waste materials, rubbish, tools, equipment, temporary buildings or structures and surplus materials and shall leave the work area clean and in a condition reasonably fit for immediate use. Any surplus materials or equipment, scrap or salvage materials which may have been used by Supplier but which remain the property of Owner shall be removed by Supplier to such places on the project site as may be designated by Owner.

B. Supplier shall carry out at his own expense all drainage and pumping required to keep the Work dry during his performance of the Work and until acceptance by Owner.

C. Supplier shall dispose of all water, waste, surplus excavated materials, rubbish, brush, trees, stumps, debris, petroleum products and all other materials not required in the Work at disposal areas on the site designated by Owner, or if none is designated by Owner on the site, Supplier shall remove the same from Owner's site and dispose of the same off site in a lawful manner. In no event shall Supplier allow spoil, waste or surplus materials to be placed in, or to contaminate water to be discharged into, any area that will pollute a natural stream or body of water. Supplier shall not burn any waste or surplus materials on Owner's site.

D. If, at any time, the project site has accumulated waste materials and rubbish or is hazardous due to poor housekeeping on the part of Supplier, and if upon notice to correct such conditions, Supplier fails to do so forthwith,

such failure shall be deemed a material breach of Supplier's obligations hereunder.

#### 8. SCHEDULING:

A. Unless otherwise specified by Owner, Supplier shall, within fourteen (14) days after Owner's notice to Supplier of the award of this Contract, submit for Owner's approval a detailed breakdown of "Supplier's Proposed Performance Schedule," accompanied by Supplier's projected manpower requirements on a weekly basis for the duration of the Work. Supplier's Proposed Performance Schedule shall be a breakdown of, and shall concur with, the completion requirements of this Contract. Supplier's Proposed Performance Schedule shall be in bar chart format and shall be on Owner's form furnished by Owner or on a reproducible form similar to Owner's form. Supplier's Proposed Performance Schedule shall include a breakdown by divisions of the Work into areas or facilities in sufficient detail that Owner may readily evaluate Supplier's progress at any time during the course of the Work.

B. Supplier's Proposed Performance Schedule shall be so arranged and itemized as to be of assistance to Owner in its evaluation of Supplier's requested progress payments, but in any event, unless otherwise specified in this Contract, Supplier's Proposed Performance Schedule shall be time-scaled by week and the activities shown thereon shall not exceed fourteen (14) days in duration. Further, Supplier's Proposed Performance Schedule shall, at a minimum, identify the following activities in all basic divisions of the Work for Supplier and all of his subcontractors and suppliers: (a) times for Owner approval of drawings (including shop drawings) and technical data, (b) production/supply of materials and parts by item, (c) shipping schedule, and (d) time periods during which Supplier requires access to the Work and to Owner furnished Items, if any. Supplier's Proposed Performance Schedule shall be arranged so as to group off-site and onsite work separately and shall reflect Supplier's actual plan for performing the Work.

C. Supplier's Proposed Performance Schedule shall also include the prorated amount, and percentage of the total amount, of Contract Compensation for each division of the Work, the projected completion percentage for each item on not less than a monthly basis for the duration of the Work, and a separation of off-site and on-site functions with regard to such completion percentages. Supplier's Proposed Performance Schedule shall show the projected total percentage of the Work to be completed and the anticipated progress payments on a monthly basis. Supplier's Proposed Performance Schedule shall be supported by such evidence as to its correctness as Owner may require. Supplier shall prepare and submit together with Supplier's Proposed Construction Schedule, a

"Proposed Schedule of Submittals" for drawings, shop drawings and technical data that is coordinated with Supplier's Proposed Construction Schedule and allows Owner a reasonable time to review and approve such submittals.

D. Within seven (7) days after Supplier submits Supplier's Proposed Performance Schedule and Proposed Schedule of Submittals to Owner, Supplier and Owner shall meet to review the Schedules for compliance with the terms of this Contract. Supplier shall revise the Schedules as Owner directs and shall resubmit the revised Schedules, incorporating every change which Owner directs, within two (2) days of the meeting, and Owner shall promptly issue written approval thereof. Upon written approval of the Schedules, the same shall be respectively referred to as "Supplier's Performance Schedule" and "Supplier's Schedule of Submittals" and shall not be revised without the prior written approval of Owner. By submitting said Schedules and all updates or revisions required or permitted under this Article 8, Supplier represents and warrants that the same accurately describe his plan for performing the Work and that the same conform with the final completion and any interim completion requirements of this Contract. Supplier shall not be entitled to receive any progress payments under this Contract unless and until he is performing the Work in strict accordance with the plan set forth in an approved Schedule.

E. Supplier shall regularly maintain and keep current the Schedules required under this Article 8. Each request for a progress payment shall be accompanied by three (3) copies of Supplier's Performance Schedule and Supplier's Schedule of Submittals, updated to show actual progress as compared to scheduled progress. Should Supplier wish to alter the plan for performing the Work as shown in any approved Schedule or claim an extension of the Contract time for performing the Work under Article 17 "Delays," he shall not do so nor shall he be entitled to an extension of time unless and until he has submitted a proposed revised Schedule which conforms with the requirements and is submitted for approval, all as and in the manner set forth in Paragraphs A through D of this Article 8, and if applicable, the requirements of Article 17 "Delays."

F. If the specifications contained in this Contract require the use of an activity oriented network diagram with accompanying mathematical data ("Critical Path Method"), Supplier's Proposed Performance Schedule and Supplier's Performance Schedule shall be prepared and maintained as provided in the specifications and Paragraphs A through E of this Article 8, except that if a Critical Path Method Schedule is required in lieu of the bar chart format called for in Paragraph A of this Article 8, Supplier, within thirty (30) days after Owner's notice of the award of this Contract or before commencing actual work

at the project site, whichever first occurs, shall submit for Owner's approval, Supplier's Proposed Performance Schedule and Supplier's Proposed Schedule of Submittals in that format.

G. Owner's review or approval of any Schedule permitted or required under this Contract shall in no way relieve Supplier of his obligations to plan, coordinate and schedule the Work or from complying with any time limit specified in this Contract nor shall such review or approval be deemed an admission on the part of Owner that such Schedule is feasible, practicable or reasonable.

#### 9. DRAWINGS, SPECIFICATIONS, SAMPLES AND MATERIALS:

A. Supplier shall review and compare the drawings, specifications and other instructions, whether furnished by Owner or by vendors of equipment or materials, promptly upon receipt thereof; shall check all measurements and elevations; and shall promptly notify Owner of any mistakes, omissions or inconsistencies therein. Supplier shall also notify Owner of any conflicts that the contents thereof may have with any applicable laws or regulations. In the event of such mistakes, omissions, inconsistencies or conflicts with laws or regulations being reported to Owner and being found by Owner to be as claimed, Owner will submit new drawings, specifications or other instructions correcting such defects, and any necessary adjustments of the Contract Compensation and of the time for performance of the Work will be made as provided for under Article 16 "Changes" and Article 17 "Delays." If Supplier performs any construction activity involving a mistake, omission or inconsistency in the forgoing information or any such conflict with applicable laws or regulations that he reasonably should have recognized or did recognize without so notifying Owner, Supplier shall assume responsibility for such performance and shall bear the cost of correction of the Work.

B. Owner, at its discretion, may supply Supplier with such additional plans, drawings, specifications and/or explanations as may be necessary to further detail and illustrate the Work to be done; and Supplier agrees to conform thereto. Supplier shall keep one (1) copy of all drawings and specifications at the project site in good order with all up-to-date modifications available for inspection by Owner. Where a typical or representative detail is shown on any drawings furnished by Owner, such detail shall constitute the standard of workmanship and material throughout corresponding portions of the Work. Where necessary, Supplier shall adapt such detail for use in corresponding portions of the Work in a manner approved by Owner. If any form of standard specification is incorporated by reference in this Contract, unless such incorporation expressly states

otherwise, only the technical provision or provisions of such standard specification shall be deemed incorporated, but none of the general conditions relating to the contractual risks or duties of the parties to the contract shall be deemed incorporated.

C. Where called for in the specifications, Supplier shall submit for Owner's approval drawings and other pertinent data in accordance with the instructions in such specifications. Owner will approve or note corrections to be made and return copies to Supplier. If corrections are required, Supplier shall resubmit the required drawings and other pertinent data with corrections made. When drawings meet Owner's approval, Supplier shall proceed immediately with the performance of the Work. Copies of final approved drawings will be returned to Supplier. Supplier shall then furnish Owner with the required number of copies and one (1) reproducible tracing of final corrected drawings, unless Owner specifies otherwise. In the event that Supplier produces any such drawings through the use of computer-aided design ("CAD") facilities or equipment, Supplier shall also furnish Owner, upon Owner's request, with a copy of such drawings on standard electronic data storage media (magnetic tape, disk, etc.) with the data arranged in a commonly recognized interchange file format. Notwithstanding Owner's approval of drawings and other pertinent data, Supplier shall be and remain fully responsible for the adequacy and completeness of such drawings and data and Work performed pursuant to such drawings and data; and Supplier shall not be relieved from any duties or responsibilities under this Contract on account of such approval.

D. Where called for in the specifications, Supplier shall submit samples of materials or other items to be included in the Work. Samples shall be submitted within a reasonable time prior to installation and shall be properly marked or labeled, indicating type and brand of material, its place of origin, the name of the producer, Supplier's name and the name of the project for which such item is intended. Such samples shall be approved by Owner in writing before counterparts of the same are incorporated in the Work. Supplier shall furnish items in accordance with the approved samples as required by the specifications unless prior written approval to supply any substitute has been obtained from Owner.

E. Where products are specified by manufacturers' trade names or brands, other products may not be used without Owner's prior written approval.

F. Supplier's requests for substitution of specified materials will not be considered unless such requests are accompanied by complete detailed data on the proposed substitution, together with a price comparison to the originally specified item. Any increases in cost, including redesign and engineering costs, occasioned by

substitutions requested by Supplier shall be for Supplier's account. Any reduction in cost resulting from such a substitution shall be credited to Owner.

G. Supplier shall maintain, at the project site, one (1) copy of the drawings and specifications (including addenda thereto), change orders and other modifications in good order and marked currently to record changes and selections made during construction ("as-built" information), and in addition approved shop drawings, product/technical data, material samples and similar required submittals. Promptly upon any request of Owner, but in any event before Supplier notifies Owner that the Work is ready for final inspection, testing and acceptance, Supplier shall furnish said items, in good condition, to Owner.

H. The Contract drawings and specifications are complementary, and what is required by either one shall be as binding as if required by both, unless specifically stated otherwise. In the event of a conflict between the drawings and specifications involving quality or quantities, the highest quality and the greatest quantity shall be furnished; otherwise, in resolving such conflicts, the documents incorporated into this Contract shall be given precedence in the following order: the first section of this Contract, the "Memorandum of Understanding," these General Conditions, KA3261 "Supplier-furnished e," KA3260 "Performance Bond," KA3277 "Equal Employment Opportunity," KA8089 "Small Business Concerns -Small Disadvantaged Business Concerns," KA3259 and "S-1," "Supplier Health, Safety, Security, Fire Protection and First Aid Requirements," the specifications, then the drawings. Within the drawings, dimensions on drawings shall govern over general drawings. Any work that may reasonably be inferred from drawings or specifications as being required to produce the intended result shall be supplied whether or not it is specifically called for.

#### 10. PERMITS, LICENSES AND FEES:

Supplier shall obtain and pay for all permits and licenses and shall pay all fees and shall make all deposits which may be required by law or regulation to be obtained, paid for or made in connection with the prosecution of the Work, except for any such permits, licenses, fees and/or deposits which Owner may be required by law or regulation to obtain, pay for or make directly. The actual out-of-pocket cost of all such permits, licenses, fees and/or deposits obtained, paid for or made by Supplier will be in addition to the Contract Compensation and will be paid by Owner to Supplier without markup upon submission of a proper invoice.

#### 11. BONDS:

If required by this Contract, Supplier shall furnish Owner payment and/or performance bonds in the dollar amount

of the Contract and in the form attached to this Contract as KA3260 "Performance Bond," with agents or brokers and with sureties satisfactory to Owner. The premiums for such bonds will be in addition to the Contract Compensation and will be paid by Owner to the surety upon submission of a proper invoice.

#### 12. SUPPLIER-FURNISHED INSURANCE:

Supplier shall, at his expense, procure and maintain at all times insurance coverage in accordance with form KA3261 "Supplier-furnished Insurance," to this Contract. Supplier shall give Owner such evidence of insurance coverage as Owner may reasonably require and, in any event, shall furnish Owner with a Certificate of Insurance (ACORD standard form or other form acceptable to Owner) which shall evidence each of the coverages required to be obtained and maintained by Supplier hereunder within thirty (30) days after the execution of this Contract or prior to commencement of the Work, whichever is earlier. The obligation of Supplier to indemnify Owner as stated herein shall not be conditioned upon such insurance coverage or limited to the amount of such coverage.

#### 13. SUPPLIER'S REPRESENTATIVES AND EMPLOYEES:

A. Within five (5) days after the award of this Contract and prior to commencement of any Work, Supplier shall appoint a competent "Supplier's Representative" who shall be in attendance at the project site during all working hours and who shall have charge of the Work. Supplier shall give Owner written notice of the name of Supplier's Representative, his current address, day and night telephone, facsimile and telex numbers and telegraphic address. The Supplier's Representative shall be authorized to receive orders and to act for Supplier in all matters and shall be qualified to superintend the Work.

B. Supplier agrees to enforce at all times strict discipline and good order and to dismiss from the Work any person employed by Supplier or his subcontractors if Owner deems that the presence of such person is detrimental either to the performance of the Work or to Owner's other operations, or if in Owner's opinion such person is not qualified to perform the Work assigned to him or is guilty of improper conduct.

C. Supplier agrees that, if and when he is requested by Owner to do so, he will attend and cause his subcontractors and/or their representatives to attend any and all meetings called by Owner to accelerate or discuss the progress of the Work.

D. Supplier shall furnish to Owner on a daily basis a force report showing all personnel engaged in the Work on each day. The force report shall show the craft designation of each employee and shall identify each employee as

either an employee of Supplier or one of Supplier's subcontractors.

#### 14. OWNER'S REPRESENTATIVE:

A. Within five (5) days after the award of this Contract, Owner will notify Supplier of the appointment of "Owner's Representative." The designated Owner's Representative or such other persons as Owner may, from time to time, appoint in writing for such purpose will be authorized to issue orders, directions, notices and instructions pursuant to and within the scope of this Contract. Orders, directions and instructions, oral or written, given to Supplier affecting Contract Compensation or Contract performance by any other person shall not be binding upon Owner.

B. Supplier shall not act upon instructions given on behalf of Owner by any person other than Owner's Representative or such other persons as Owner may, from time to time, appoint in writing for such purpose and then only such orders, notices and instructions as are within their express written authority.

#### 15. RECORDS:

Supplier shall keep a complete set of accounts and records on a cost accounting basis, in accordance with generally accepted accounting principles, showing all expenditures under this Contract including, without limitation, Supplier's detailed estimates including all takeoff, recap and work sheets prepared in connection therewith, time sheets for all employees engaged in performing the Work and all cost reports generated in connection with this Contract. If this Contract provides for compensation on a cost basis or if Supplier claims compensation from Owner under Article 16 "Changes," Article 17 "Delays," Article 19 "Claims," Article 21 "Suspension of Work," or Article 22 "Termination for Convenience," or otherwise, as a condition precedent to any obligation of Owner to pay for Work hereunder, Owner or its representatives shall have the right to inspect, audit and otherwise verify such accounts and records; and Supplier shall furnish any supporting information in connection with such accounts and records, as Owner may request.

#### 16. CHANGES:

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



writing, by Owner, and thereafter shall promptly comply with all such written directives of Owner. Supplier shall not be entitled to any increase in Contract Compensation or any extension of time for performance on account of any change in the Work unless (a) such change or addition is covered by Owner's written notice, and (b) Supplier strictly complies with the requirements of Paragraph D of this Article 16.

B. Subject to the provisions of Paragraph A of this Article 16, the Contract Compensation shall be increased or decreased, as the case may be, on account of each authorized change, addition or deletion by an amount equal to the sum of (a) the lowest reasonable increase or decrease, if any, in the direct cost of performing the Work resulting from such change, addition or deletion and (b) the allowances provided for in this Contract, or if no allowances are stated in this Contract, a maximum of fifteen percent (15%) of the direct cost to cover overhead and profit as the combined allowance to Supplier and all subcontractors for overhead and profit; provided that if the Contract Compensation provides for unit prices, such unit prices shall be applicable in lieu of the amounts specified in clauses (a) and (b) of this sentence to the extent such change, addition or deletion involves Work covered by such unit prices. If any change or accumulation of changes is covered by such unit prices or if such unit prices are subsequently agreed upon and if quantities originally contemplated are so changed by such written Owner directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to Owner or to Supplier, the applicable unit prices shall be equitably adjusted. Under no circumstances, however, shall Supplier be entitled to any amount for indirect costs, damages or expenses of any nature other than those referred to above, including, without limitation, to "impact" costs or labor inefficiency costs.

C. Subject to the provisions of Paragraph A of this Article 16 and Article 17 "Delays," the Contract time of performance of the Work shall be increased or decreased, as the case may be, for each authorized change, addition or deletion by the lowest reasonable number of days by which the time required for Supplier's completion of each phase of the Work will be increased or decreased as a result of such change, addition or deletion.

D. Within ten (10) days following Supplier's receipt of each written notice issued by Owner pursuant to Paragraph A of this Article 16, Supplier shall give Owner a detailed written statement of the adjustments in Contract Compensation and/or Contract time of performance which Supplier proposes to be made pursuant to Paragraphs B and C of this Article 16. Said statement shall be accompanied by itemized supporting data identifying each and every element of increase or decrease in cost involved, including a detailed schedule showing when

Supplier proposes to start and complete the changes in the Work and the net effect such changes in the Work will have on any of the completion requirements. At Owner's option and upon Supplier's written request, Owner may grant in writing an appropriate extension of said ten (10) day period if, in Owner's opinion, conditions warrant such extension, provided Supplier's written request therefore was submitted to Owner prior to the expiration of said ten (10) day period

E. In the event Owner and Supplier do not agree upon the adjustments in Contract Compensation or Contract time of performance, as provided in Paragraphs B and C of this Article 16, Owner may, at its option, determine the adjustments which it considers to be appropriate and notify Supplier in writing of such determination. Each such determination of which Supplier is so notified by Owner shall be final and binding upon Owner and Supplier; and this Contract shall be modified in accordance therewith, unless within thirty (30) days following Supplier's receipt of the notice covering such determination, Supplier protests such determination by written notice to Owner. Each such notice of protest shall contain a detailed statement of the elements of Owner's determination with which Supplier disagrees. Supplier's protest of any such determination shall in no way whatsoever relieve Supplier of its obligation to comply promptly with any written notice issued by Owner pursuant to Paragraph A of this Article 16. Notwithstanding Supplier's protest of any determination concerning adjustments in Contract Compensation made by Owner pursuant to this Paragraph E, progress payments shall take such determination into account thereafter until the appropriate adjustment as provided for in Paragraph B of this Article 16 is agreed upon by the parties or is otherwise finally determined. Pending final resolution of any dispute arising under this Contract, unless Owner and Supplier otherwise agree in writing, Supplier shall proceed diligently with the performance of the Work and Owner shall continue to make payments subject to the terms of Article 20 "Payment."

F. From time to time during the course of the Work, Owner may provide Supplier with descriptions of changes, additions or deletions being considered by Owner. As soon as practicable following his receipt of each such description, Supplier shall provide Owner with a detailed written statement of the adjustments in Contract Compensation and/or Contract time of performance, if any, which Supplier would propose pursuant to Paragraphs B and C of this Article 16, in the event Owner authorized such changes, additions or deletions pursuant to Paragraph A of this Article 16.

G. This Article 16 shall not require Owner to give Supplier any preference in awarding additional work, whether or not within the general scope of the Work

#### 17. DELAYS:

A. If Supplier is delayed at any time in prosecuting the Work by (a) any act or neglect of Owner, (b) changes in the Work, (c) delays, which Supplier could not reasonably foresee or provide against, in the issuance of permits, certificates or approvals from any governmental authority (collectively, clauses (a) through (c) of this Paragraph A, the "Compensable Delays") or by (d) fire or unavoidable casualties, (e) unusually severe and abnormal climatic conditions or (f) any other cause which Supplier and his subcontractors could not reasonably foresee or provide against (collectively, clauses (d) through (f) of this Paragraph A, the "Excusable Delays"), then the Contract final completion date shall be extended pursuant to the procedures set forth in Article 16 "Changes" for a reasonable time provided, however, that Supplier, within ten (10) days of the commencement of each such delay notifies Owner, in writing, of the cause of such delay and provides therein his reasonable estimate of the probable duration thereof and his recommendations as to how to minimize the delay, together with essential supporting data, including, without limitation, submission of a complete schedule revision demonstrating the effects of the delay on the completion of the Work, as and in the manner set forth in Article 8 "Scheduling." A Compensable Delay is a change to the Work which shall result in an adjustment in the Contract Compensation as provided in Paragraph B of this Article 17. For Excusable Delays, Supplier shall not be entitled to an adjustment in Contract Compensation. No time extension shall be granted on account of any cause where the Compensable Delay or Excusable Delay, as the case may be, is concurrent with a delay for which additional time for performance is not provided for in this Article 17. The term "unusually severe and abnormal climatic conditions" means greater than normal inclement weather, considering the full term of the Contract and using a 10-year average of accumulated record mean values from climatic data compiled by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for the locale of the Work. Owner may grant time extensions without notice to Supplier's sureties, and the absence of such notice shall not relieve such sureties from any of their obligations to Owner. Under no circumstances shall Supplier be entitled to an extension of time on account of labor disputes other than on account of strikes which affect all construction industry trades in the general locale of the project site or strikes which relate to labor disputes involving Owner's employees.

B. For Compensable Delays, Supplier's sole monetary compensation shall be for extended duration costs

determined by (a) computing the actual excess field direct costs for the extended duration, plus (b) a reasonable amount for similar items as substantiated by any subcontractor, plus (c) escalation in labor and materials costs related to industry-wide increases in the costs of such items, plus (d) five percent (5%) of the sum of clauses (a) through (c) of this sentence for home office overhead. In determining the compensation due hereunder, no allowance shall be made for profit.

#### 18. INSPECTION AND ACCEPTANCE:

A. All Work and materials, both before and after installation, shall be subject to Owner's inspection and approval. Owner may visit, take inventory and inspect the Work and materials and make tests thereon in order to check analyses, weights, proportions, dimensions and character of materials and the temperatures at which they are prepared at all times and places during the progress of the Work. Supplier shall provide access to the Work and materials and reasonable facilities and assistance for the safety and convenience of Owner for such activities. If any law, ordinance, regulation, code or governmental authority requires any of the Work to be tested, inspected or approved, Supplier shall give Owner reasonable notice of the time and place thereof and cause the same to be undertaken at Supplier's expense.

B. Substantial completion is the stage in the progress of the Work when the Work or a designated portion thereof is sufficiently complete in accordance with the requirements of this Contract that Owner can use or occupy the Work or a portion of it, as the case may be, for its intended purpose. When Supplier considers that the Work or a part of it that Owner agrees to accept separately as provided in Paragraph D of Article 5 is substantially complete, Supplier shall so notify Owner. Within a reasonable time after receipt of such notice, Owner will inspect the Work identified in such notice and if Owner determines that such Work is, in fact, substantially complete, Owner will prepare and issue to Supplier a "Certificate of Substantial Completion" which shall establish the date of substantial completion and which shall list any items of Work which Owner determines are not completed in strict accordance with the terms of this Contract and which shall fix the time within which Supplier shall complete the listed items, which time shall be no longer than thirty (30) days following the date of substantial completion. Within a reasonable time after receipt of notice from Supplier that the Work as a whole is finally completed and ready for inspection, testing and acceptance, Owner shall make such inspection and tests as it may deem necessary. If the Work is acceptable, Owner shall issue to Supplier a "Certificate of Completion and Acceptance" covering the Work.

C. Neither the issuance of a "Certificate of Completion and Acceptance" nor other inspection, approval or payment, including final payment, under this Contract shall be construed to be an acceptance of defective material or workmanship or shall be an admission of Supplier's satisfactory performance of the Work and shall not relieve Supplier of any of his obligations under this Contract.

19. CLAIMS:

Subject to and without in any way enlarging or limiting the other provisions of this Contract, and unless otherwise specifically prescribed in this Contract, any claim of Supplier against Owner for extension of time, extra compensation or damages, whether under this Contract or otherwise, shall be conclusively deemed to have been waived by Supplier unless said claim is set forth in writing, accompanied by itemized supporting data specifically identifying each and every element of cost that Supplier claims to have incurred or claims that he will incur, and filed with Owner within thirty (30) days after the conditions upon which said claim is based became known or should have become known to Supplier.

20. PAYMENT:

A. Supplier shall receive the Contract Compensation as full and complete compensation for performance under this Contract. Subject to all other provisions of this Contract, the Contract Compensation shall be paid as provided in this Article 20.

B. Within ten (10) days after the end of each month, Supplier shall submit a detailed estimate of the value of the Work done and materials delivered to the project site during such month. Unless otherwise provided elsewhere in this Contract, payments shall be made on account of materials and equipment delivered and suitably stored at the project site for subsequent incorporation into the Work. If Supplier requests Owner, and Owner, at its sole option, agrees, to make payments for materials and equipment suitably stored off of the project site, Supplier shall advise Owner of the location of such materials and equipment. Payment for materials and equipment stored on or off the project site shall be conditioned upon compliance by Supplier with procedures satisfactory to Owner to establish Owner's title to such materials and equipment or to otherwise protect Owner's interest. Supplier warrants that title to all Work covered by such submission will pass to Owner no later than the time Owner pays Supplier on account thereof. Supplier's submission may not include requests for payment of amounts Supplier does not intend to pay to a subcontractor or material supplier because of a dispute with any such person or entity or for any other reason. Owner will then make its own determination of said value, and said determination of Owner shall be final and conclusive. Unit prices, if applicable, shall govern.

C. Within thirty (30) days after submittal of the estimate as provided in Paragraph B of this Article 20, Owner shall remit to Supplier ninety percent (90%) of the amount determined by Owner to be due to Supplier for such period.

D. Within ten (10) days after the expiration of the period within which liens against the Work or Owner's property may be filed under the laws of the state where the Work is performed (such period to commence no sooner than the completion date as set forth in the "Certificate of Completion and Acceptance" as issued pursuant to Article 18 "Inspection and Acceptance"), Owner shall pay to Supplier the balance of the Contract Compensation, subject to the satisfaction by Supplier of the conditions herein set forth.

E. As a condition precedent to Owner's obligation to make payment of retention monies under this Contract, Supplier shall execute a written general release and waiver of all claims against Owner, its subsidiaries, affiliated companies and the directors, officers, employees, agents, representatives and property of any of the foregoing arising under or in any way connected with this Contract except for disputed claims, made in good faith, and specifically reserved in any such release; and Owner may further require Supplier to furnish comparable written general releases and waivers of all claims by any and all subcontractors, assignees, vendors or others furnishing labor, materials, services or equipment in connection with Supplier's performance of this Contract, subject to comparable reservations in the case of disputed claims. If any such person or entity should refuse to furnish such releases, including any release and waiver of lien which Owner requires, Supplier may furnish a bond satisfactory to Owner to indemnify Owner against such claim or lien.

F. Supplier shall notify Owner of all claims and promptly pay any undisputed claims of any and all subcontractors, assignees, vendors or others furnishing labor, materials, services or equipment in the performance of the Work under this Contract or any other contract with Owner. Supplier warrants, upon submitting a pay estimate under this Article 20, that all Work for which he has been previously paid is, to the best of Supplier's knowledge, free and clear of liens, claims, security interests or encumbrances in favor of Supplier or any of his subcontractors, materials suppliers or other persons or entities that could make a claim on the basis of providing labor, materials, services or equipment relating to the Work.

G. Supplier shall immediately discharge or obtain releases for stop notices, liens, attachments or levies which may be filed in connection with the Work or any work by Supplier under any other contract with Owner. Owner may withhold from any monies due Supplier

under this Contract or any other contract between the parties hereto, in addition to amounts withheld under Paragraph C of this Article 20, one hundred twenty-five percent (125%) of the aggregate amount of stop notices, liens, attachments or levies until the same are discharged, satisfied or released. If all such stop notices, liens, attachments or levies are not discharged, satisfied or released within a reasonable time prior to the date Owner may be directed to pay the same by court order or make such payment in order to preserve or protect Owner's property, Owner may, upon notice to Supplier of its intention to do so, apply any funds withheld or monies to become due to Supplier to satisfy, discharge or secure the release of the same. Any such application shall constitute payment to Supplier in like amount under this Contract. Supplier shall be liable to Owner for any additional expense, including attorneys' fees, incurred by Owner as a result of Supplier's default hereunder; and Owner shall have the right, among other remedies, to deduct the amount of any such additional expense from the Contract Compensation.

H. Without limiting any other rights which Owner may have, whether pursuant to this Contract or otherwise, Owner may withhold all or any portion of any progress payment or final payment as and to the extent Owner, in good faith, determines such withholding to be necessary in order to protect it from loss because of (a) defects in materials or workmanship, (b) claims, levies, attachments, stop notices or court orders filed, or evidence indicating probable filing of such claims, levies, attachments, notices or orders, including claims covered by insurance until such claims are accepted by Supplier's insurance carrier, (c) claims, whether valid or not, that Supplier has failed to make payments promptly or properly to his subcontractors, or for labor (including fringe benefits) or for materials, equipment, transportation, shipping costs, services, taxes, fees or any other obligation arising out of the Work; (d) reasonable indication that the Work cannot be completed for the unpaid balance of the Contract Compensation, (e) damage to Owner's property, any portion of the Work or to any work performed by Owner, another supplier or subcontractor, (f) reasonable indication that the Work cannot be completed within the time for completion set forth in this Contract, (g) failure to furnish sufficient, properly skilled labor or to supply sufficient materials or otherwise to diligently prosecute the Work, (h) failure to deliver updated progress schedules which comply with the provisions of this Contract as to content or time for submission, (i) failure to deliver, if required under the provisions of this Contract, insurance certificates, bonds, as-built information, written guarantees or warranties or to obtain permits or approvals required by any authority having jurisdiction over the Work, (j) failure to adhere to laws, ordinances, regulations or orders of any authority having jurisdiction over the Work or the project site, (k)

failure to discharge or bond a mechanic's or materialman's lien or notice of lien or stop notice filed against any part of the Work or the project site in a manner satisfactory to Owner, or (l) any other failure to perform in accordance with the provisions of this Contract. If Owner exercises its right to withhold hereunder in good faith, Supplier shall not be entitled to any interest whatsoever on the money so withheld, regardless of the outcome of any subsequent claim resolution. When the cause for any withholding hereunder has been remedied by Supplier to Owner's satisfaction, the amount withheld shall be released and paid.

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

## 21. SUSPENSION OF WORK:

Owner may, for its convenience, suspend the Work in whole or in part at any time by written notice to Supplier stating the nature, effective date and anticipated duration of such suspension; whereupon Supplier shall suspend the Work to the extent specified and shall place no further orders or subcontracts relating thereto. During the period of any such suspension, Supplier shall protect and care for all Work, materials and equipment at the project site or at the storage areas under his responsibility. Supplier shall give Owner copies of all outstanding orders and subcontracts for materials, equipment and services and shall take any action on such orders and subcontracts as Owner may direct. If the cost of the Work, including the cost of any additions to the Work made necessary by such suspension, is increased or decreased by such suspension, the Contract Compensation shall be adjusted by the Supplier's actual direct costs, as approved by Owner, resulting from such suspension, plus an allowance of ten percent (10%) of the approved direct costs for overhead and profit. If additional time for completion of the Work is required as a result of such suspension, Supplier shall submit a written request for additional time before commencing work after the period of such suspension. Failure to submit such a request shall be deemed a waiver of any right to additional time due to such suspension. In addition to the forgoing right to suspend the Work, Owner, in like manner, may order Supplier to suspend all or any part of the Work, without liability to Supplier therefore, whenever, in Owner's reasonable judgment, Supplier has failed to correct Work that is not in accordance with the requirements of this Contract. Such order shall remain in effect until Owner reasonably determines that the cause for such order has been eliminated. This right shall be in addition to and not in limitation of Owner's rights under Article 23 "Failure by Supplier."

22. TERMINATION FOR CONVENIENCE:

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

B. In the event of a termination of the Work or any portion thereof under this Article 22, Owner will pay to Supplier, subject to the limitations hereinafter set forth, the sum of (a) the costs incurred by Supplier in the performance of the terminated portion of the Work prior to termination, (b) an allowance for overhead, general and administrative expenses, including those of all subcontractors, which shall in no event exceed fifteen percent (15%) of direct costs, and (c) an allowance for profit not to exceed ten percent (10%) of the foregoing in lieu of profit. Deductions will be made by Owner for amounts previously paid to Supplier and for any amounts which may be due Owner or which Owner may offset or withhold by the terms hereof. In any event, the total amount of all payments to Supplier shall not exceed the proportion of the total Contract Compensation that the Work actually performed (including materials delivered to the project site or in transit to the project site) at the date of termination (less a reasonable allowance to cover the cost of correcting any defective Work) bears to the entire Work to be performed hereunder. Any payment to Supplier under this Article 22 shall be made in accordance with the provisions of Article 20 "Payment."

C. After receipt of a notice of termination, Supplier shall submit to Owner its written termination claim, in the form and with the certification which Owner may prescribe. Such claim shall be submitted promptly, but in no event more than ninety (90) days after the effective date of termination.

23. FAILURE BY SUPPLIER:

A. In the event (a) Supplier fails to diligently prosecute the Work (except in cases for which an extension of time is provided), (b) Supplier fails to make the progress set forth in this Contract, (c) Supplier fails to supply enough

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

B. In the event Owner exercises any of its rights under Paragraph A of this Article 23, Supplier shall not receive any further payment for the portion of the Work taken out of the hands of Supplier until the Work is completed. The actual expense of completion, including subcontracting costs and compensation for materials and equipment furnished by Owner and for its managerial and administrative expenses attributable thereto, shall be certified by Owner and shall be binding on the parties. If such expense shall be less than the unpaid balance of the Contract Compensation to be paid Supplier for fully performing the Work, the difference shall be paid to Supplier in accordance with the provisions of Article 20 "Payment"; and the property of Supplier or such other person shall be released to Supplier or such other person, as the case may be, at the project site. If such expense exceeds the unpaid balance of such compensation, Supplier shall promptly pay the difference to Owner on demand. Owner may retain possession of and/or place in storage Supplier's or such other person's equipment and property, at the sole risk and expense of Supplier or such other person, as the case may be, until such payment is made, and may,

upon sixty (60) days' notice, sell the same at public or private sale and be a purchaser thereof and may execute any act or deed on behalf of and as agent of Supplier or such other person, as the case may be, to complete the sale and to transfer and perfect the title of any purchaser thereof.

C. In addition to the rights provided above, Owner shall have and may exercise or enforce any other rights or remedies provided by law or equity for any default or breach by Supplier; and Supplier shall be liable for and shall pay any losses or damages suffered by Owner arising out of any such breach or default by Supplier in the performance of this Contract.

#### 24. CONFIDENTIAL INFORMATION:

A. All information, including plans, drawings, designs, calculations, specifications, reports, daily logs, data and other information disclosed to Supplier by or on behalf of Owner, or prepared by Supplier in connection with the Work, shall remain or become, as the case may be, the property of Owner. All such material shall be delivered to Owner by Supplier upon completion of the Work or upon request, whichever is sooner.

B. Supplier represents and warrants that, to the best of his knowledge and belief, no information or material he discloses to Owner in connection with the performance of the Work involves any subject matter which is a trade secret of any third party and that Supplier is not aware of any adverse claim, interest or other fact or right, including patent infringement or misappropriation of trade secrets, which would in any way affect Supplier's ability to enter into or to perform this Contract or in any way impair the right of Owner to freely utilize any information or developments flowing therefrom.

C. Supplier shall not use the name of Owner in connection with any other project, proposed project, advertising brochure or other commercial use without the prior written consent of Owner.

D. In order to prevent the unauthorized disclosure and/or use of the information referred to in Paragraph A of this Article 24 (collectively, the "Confidential Information") which may cause damage to Owner and/or other parties to whom Owner owes a duty of confidentiality or who have an interest in the same, Supplier shall receive, keep and maintain the Confidential Information in strict confidence and shall not disclose or use the same except as expressly provided herein. Supplier may disclose the Confidential Information (a) to such of his own officers, directors, employees and agents as have a need (and only to the extent such persons have a need) to know such information in connection with the proper performance of the Work, (b) to such of his subcontractors, vendors, suppliers and the officers, directors, employees and agents of any of them as have a need (and only to the

extent such persons have a need) to know such information in connection with the proper performance of the Work, and (c) with the Owner's prior written consent, which Owner may withhold in its sole discretion (Supplier and all such persons to whom Supplier is so authorized to disclose the Confidential Information being, the "Authorized Recipients"). The Authorized Recipients may use the Confidential Information solely for the purpose of performing the Work or performing work under any other contract with Owner. In the event Supplier shall disclose any Confidential Information to any other Authorized Recipient, Supplier shall ensure that each such person is made aware of, and shall observe and comply with, the obligations of confidentiality, non-disclosure and use of the Confidential Information as provided herein. The foregoing obligations of confidentiality, non-disclosure and use shall not apply to any Confidential Information to the extent that the Authorized Recipient can prove that (a) such Confidential Information was lawfully in his possession prior to the effective date of this Contract and was not acquired directly or indirectly from Owner, or (b) such Confidential Information lawfully is or becomes public knowledge through no breach of this Contract or any other duty of confidentiality, non-disclosure or use owed to Owner, including, without limitation, such duties as are intended to apply to Authorized Recipients hereunder, or (c) such Confidential Information is lawfully provided to such Authorized Recipient by any third party, unless the Confidential Information was obtained directly or indirectly from Owner, or the third party acquired the Confidential Information through a breach of any other duty of confidentiality, non-disclosure or use owed to Owner, including, without limitation, such duties as are intended to apply to Authorized Recipients hereunder.

E. If requested by Owner to do so, Supplier shall procure a written undertaking from each Authorized Recipient which shall acknowledge the terms of this Contract with respect to the treatment of Confidential Information and which shall evidence such Authorized Recipient's agreement to be bound by such terms. Such undertaking shall be in favor of Owner and Supplier and shall be in such form as Owner may prescribe.

#### 25. CAMERAS, PHOTOGRAPHS AND OTHER MEDIA:

Supplier shall not bring any cameras onto the premises of Owner and shall not take, have taken or otherwise obtain photographs, films, videotapes or other media representations of any kind of Owner's premises, including, without limitation, photographs, films, videotapes or other media representations of the Work at various stages of progress or upon completion thereof, or photographs, films, videotapes or other media

representations of any plans, drawings, specifications or other subject matter relating to the Work without the prior written consent of Owner. In the event that Owner does authorize Supplier to take, have taken, or otherwise obtain any such photographs, films, videotapes or other media representations, the receipt and use thereof will be subject to such terms and conditions as Owner deems appropriate at the time. The aforesaid restrictions concerning photographs, films, videotapes and other media representations shall also apply in the event any of the Work is to be performed off Owner's premises.

#### 26. PATENTS, TRADE SECRETS, COPYRIGHTS AND TRADEMARKS:

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

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

C. In the event any said action is based on infringement or violation of a proprietary interest (a) relating solely to specifications and drawings furnished by Owner, to a particular process or the product of a particular manufacturer specified by Owner or to Owner-furnished Items, and (b) such specifications, drawings, processes or products are something other than that which has been offered or recommended by Supplier to Owner or to other parties, then the provisions of Paragraphs A and B of this Article 26 shall not be applicable.

#### 27. RESPONSIBILITY FOR HEALTH, SAFETY, SECURITY, FIRE PROTECTION AND FIRST AID:

Supplier shall conform to all health, safety, security, fire protection and first aid requirements set forth in KA3259 and "S-1," "Supplier Health, Safety, Security, Fire Protection and First Aid Requirements," to this Contract.

#### 28. LABOR AGREEMENTS AND COSTS:

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

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

#### 29. INDEMNITY:

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

B. Without limiting the foregoing, Supplier shall indemnify, save harmless and defend Owner, its subsidiaries, its affiliated companies and the directors, officers, employees, agents and representatives of any of the foregoing from and against any and all suits, actions, legal proceedings, claims, demands, damages,

costs and expenses of whatsoever kind or character, including, without limitation, attorneys' fees and expenses, arising out of or by reason of any injuries (including death) or damage to any person or entity employed by or acting on Supplier's behalf in connection with this Contract, except where caused by the concurrent negligence of Owner, its directors, officers, employees, agents and representatives (other than Supplier or anyone acting on his behalf), in which event Supplier's liability for the payment of damages, costs and expenses hereunder shall be reduced in proportion to the negligence of Owner, its directors, officers, employees, agents and representatives (other than Supplier or anyone acting on his behalf) on the basis of comparative negligence or fault.

C. Supplier's obligations under this Article 29 and under Article 24 "Confidential Information" and Article 26 "Patents, Trade Secrets, Copyrights and Trademarks" shall continue without limitation as to time, notwithstanding the extinguishment of other rights and duties under this Contract by completion, Contract termination or any other manner.

30. TAXES:

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

B. Supplier shall be responsible for and shall pay all contributions, taxes and assessments which are measured by wages, salaries or other remuneration paid to persons employed by Supplier or his subcontractors for the Work, or which arise by virtue of their employment, and which now or hereafter may be imposed by any governmental body. Such contributions, taxes and assessments shall include, without limitation, those for social security, disability, unemployment and other benefits, and for income withholding taxes. Supplier shall comply with all administrative regulations relating to such matters.

31. TOXIC AND HAZARDOUS SUBSTANCES:

Supplier shall fully comply with all applicable toxic or hazardous substance information and/or control laws and regulations and shall notify Owner and all other employers

with personnel at the site of the Work of any toxic or hazardous substance which Supplier uses or intends to use. Supplier shall further provide Owner and all other employers with personnel at the site of the Work with a "Materials Safety Data Sheet" pertaining to any toxic or hazardous substance which Supplier uses or intends to use in the Work. Supplier shall immediately notify Owner should he encounter any toxic or hazardous substances on the project site while performing the Work and shall take such action with respect thereto as is requested by Owner.

32. LAWS AND REGULATIONS:

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

33. NOTICES:

All notices to Supplier hereunder shall be in writing and may be served on Supplier or on Supplier's Representative by hand, facsimile, telex, telegram, cablegram or regular mail addressed to Supplier or to Supplier's Representative, as the case may be, at the address indicated in or as provided under this Contract. All notices to Owner hereunder shall be in writing and may be served on Owner by hand, facsimile, telex, telegram, cablegram or regular mail addressed to Owner at the address indicated in this Contract, with a copy sent to Owner's Representative. The address of either party or their representative(s) may be changed at any time by written notice of such change to the other party. Any such notice shall be effective upon delivery to the intended recipient or seven (7) days after being placed in the ordinary course of the mail, postage paid and properly addressed, whichever occurs first.

34. INDEPENDENT SUPPLIER:

Supplier shall perform the Work solely as an independent supplier and not as the agent or employee of Owner.

35. ASSIGNMENT AND SUBCONTRACTING:

A. Neither this Contract nor any right, privilege or obligation hereunder shall be assigned or delegated by subcontract or otherwise in whole or in part by Supplier without the prior written consent of Owner. Any attempted assignment without such prior written consent shall be void. Supplier shall make all the terms and conditions of this Contract (so far as they are applicable) the terms and conditions of any permitted subcontract.



B. The subcontracting of all or any part of the Work by Supplier shall not relieve Supplier from any of the obligations or conditions of this Contract. As between the parties hereto, each subcontractor shall be considered the agent and employee of Supplier. The acts and omissions of each subcontractor and all persons either directly or indirectly acting for him shall be deemed to be the acts and omissions of Supplier, and Supplier shall remain liable and responsible to Owner hereunder as if no subcontract had been made.

C. Each subcontract shall require each subcontractor to perform that portion of the Work to be performed by said subcontractor in strict accordance with the drawings and specifications that are part of this Contract, as the same may be amended in accordance herewith, insofar as applicable to said subcontractor's portion of the Work; and each subcontract shall provide that each subcontractor shall perform his subcontract so as not to result in the violation by Supplier of any of the terms, covenants or conditions of this Contract. Supplier shall include in each subcontract such other terms and conditions as he may deem necessary to maintain control over the Work and to allow him to fully comply with all of his obligations and responsibilities under this Contract as if he were performing all of the Work hereunder without such subcontracts.

D. Nothing contained in this Contract or any subcontract shall create any contractual relationship between Owner and any subcontractor or vendor or create any obligation on the part of Owner to pay or to see to the payment of any sums to any subcontractor or vendor.

E. If labor difficulties develop as a result of the existence of any subcontract or a subcontractor is deemed to be detrimental to either the progress of the Work as a whole or to Owner's operations, upon Owner's request, Supplier shall immediately terminate said subcontract, without cost to Owner, and make other arrangements to perform his obligations hereunder. Each subcontract and each lease of capital equipment shall be assigned to Owner with such assignment to be effective only should Owner terminate this Contract pursuant to Article 23 "Failure By Supplier." Such assignment shall be subject to the prior rights of the surety under any bond relating to this Contract.

36. WAIVER:

No waiver of any provision of this Contract shall constitute a waiver of any other provision of this Contract or of the same or any other provision in any other instance. No waiver shall be effective except in writing signed by the authorized representatives of the parties hereto.

37. ENTIRE CONTRACT:

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

38. APPLICABLE LAW AND RESOLUTION OF DISPUTES:

A. This Contract shall be governed by and construed in accordance with the laws of the State of California without reference to principles regarding conflicts of laws.

B. The parties hereto will attempt in good faith to resolve promptly any controversy, claim or dispute arising out of or relating to this Contract (collectively, a "Dispute") by means of negotiation. If any Dispute should arise, Owner's Representative and Supplier's Representative shall meet at a mutually acceptable time and place within ten (10) days after either party has received written notice from the other party of the existence of such Dispute, and thereafter as often as they reasonably deem necessary, to exchange all relevant information and to attempt to resolve the Dispute. If the Dispute has not been resolved within twenty (20) days after receipt of written notice of such Dispute or if the Representative of the party receiving such notice will not meet within ten (10) days, the Dispute shall be referred to senior executives of the parties with full authority to settle the Dispute (the "Senior Executives") who shall likewise meet to attempt to resolve the Dispute. To the extent they have not already done so, the parties shall exchange all relevant information and statements of their position on all issues relevant to the Dispute. If the Dispute has not been resolved within twenty (20) days following referral to the Senior Executives or if no meeting of Senior Executives has taken place within ten (10) days after such referral, either party may then initiate mediation of the Dispute as provided in Paragraph C of this Article 38.

C. If the Dispute has not been resolved through negotiations as contemplated in Paragraph B of this Article 38, the parties shall endeavor to settle the Dispute by mediation under the Construction Mediation Rules of the American Arbitration Association, as then in effect.

D. If the Dispute has not been resolved through mediation as contemplated in Paragraph C of this Article 38 within ninety (90) days of the commencement of such procedure, or if either party will not participate in such procedure, the Dispute (and any dispute, disagreement

or controversy as to whether such Dispute is subject to arbitration pursuant to this Paragraph D) shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as then in effect, by three (3) arbitrators of whom each party shall appoint one (1). The arbitration shall be governed by the United States Arbitration Act, as then in effect. The award of the arbitrators shall be final and binding on all parties to the arbitration. Judgment upon the award may be entered by any court having jurisdiction thereof. The place of arbitration shall be San Francisco, California, unless the parties shall mutually agree

otherwise. The arbitrators are not empowered to award damages in excess of actual damages, including, without limitation, any exemplary or punitive damages.

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