

TERMS AND CONDITIONS

1. Scope of Work. The term "Work" as used herein means the repairs, construction and services required by the Agreement, and includes, without limitation, all other labor, materials, equipment, deliverables, designs, research materials, documentation, goods and services provided, or to be provided, by Supplier to fulfil Supplier's obligations under the Agreement. Customer hereby authorizes Supplier to perform the Work. Supplier may not subcontract the performance of the Work to any person without the prior written consent of Customer unless the subcontractor is identified to Customer prior to the commencement of the Agreement; provided, that with respect to all permitted subcontractors (a) Supplier shall use its best efforts to subcontract only with persons that have the requisite skills to perform the subcontracted obligations in accordance with the terms of the Agreement, and (b) Supplier shall be responsible and liable for the acts and omissions of each subcontractor and its employees and agents and shall be responsible for all fees and expenses payable to any subcontractor.
2. Location for Performance of Work.
 - A. Supplier's performance for the Work shall be (i) at a location owned by or leased to Supplier, or (ii) at a location owned by or leased to Customer or at another location arranged by Customer pursuant to a mooring arrangement (each such location hereinafter called the "Location"). If the Location is owned by or leased to Supplier, (a) Supplier shall provide a safe berth for the Vessel; (b) Supplier shall ensure that the Location is in good and operable condition free of hazards and dangerous obstructions and conditions so that the Vessel can safely enter and remain at the Location for the Work; (c) Supplier shall ensure that the electrical supply at the Location will be properly upgraded, increased, placed and/or provided for the performance of the Work; (d) Supplier shall remove or move all snow at the Location; and (e) Supplier shall provide a steel gangway or staircase to allow for safe and easy exit out of and entrance into the Vessel.
 - B. If the Location is a floating berth owned by or leased to Supplier, the following additional provisions shall apply.
 - i. Should the Vessel be fully manned by Customer's crew and under its own power, Customer shall sail the Vessel to the floating berth. Customer shall directly contract for tug assistance to aid in positioning the Vessel at the floating berth as directed by the Supplier, who shall mark the tie-up spot. Customer shall be responsible for mooring tie-up and let-go of the Vessel at the floating berth, including line and anchor handling, and Supplier shall provide safe wharfing and berthing services including, but not limited to, safe guiding, spotting, and tying-up of the Vessel into place when the Vessel arrives at the Location. Supplier shall arrange for and notify Customer of specific knowledgeable employees of Supplier to be present at the Location to oversee guiding, spotting, tie-up, and/or other operations when the Vessel arrives at the Location.
 - ii. Should the Vessel not be fully manned by Customer's crew and/or considered a "dead ship", Customer shall contract directly for tug assistance, and tug Supplier shall tow the Vessel under a "Dead Ship Tow" agreement to the floating berth. Supplier shall direct the tug Supplier regarding positioning of the Vessel at the floating berth. Supplier shall mark the tie-up spot and shall provide safe wharfing and berthing services including, but not limited to, safe guiding, spotting, and tying-up of the Vessel into place when the Vessel arrives at the Location and letting-go of the Vessel when the Vessel departs the Location, suitable for and in keeping with the Great Lakes marine industry definition and understanding of long-term lay-up. Supplier shall arrange for and notify Customer of specific knowledgeable employees of Supplier to be present at the Location to oversee guiding, spotting, tie-up, and/or other operations when the Vessel arrives at the Location.

- C. If the Location is a drydock owned by or leased to Supplier, the following additional provisions shall apply:
- i. Should the Vessel be fully manned by Customer's crew and under its own power, Customer shall sail the Vessel to a location designated by Supplier in the immediate vicinity of the drydock. Customer shall arrange for tug assistance to guide the Vessel into the drydock following shutdown of the Vessel's engines and equipment and thereafter out of the drydock following completion of drydock Work; provided, however, Supplier shall direct the tug Supplier regarding positioning of the Vessel into and out of the drydock. Supplier shall mark the tie-up spot and shall provide safe wharfing and berthing services including, but not limited to, safe guiding, spotting, and tying-up of the Vessel into place when the Vessel arrives at the Location, letting-go of the Vessel when the Vessel departs the Location, and line and anchor handling. Supplier shall be responsible for the Vessel once it enters the drydock.
 - ii. Should the Vessel not be fully manned by Customer's crew and/or considered a "dead ship", Customer shall contract directly for tug assistance and tug Supplier shall assume control of the Vessel under a "Dead Ship Tow" agreement. Following the arrival of the Vessel in the immediate vicinity of the drydock, the tug Supplier shall guide the Vessel into the drydock and thereafter out of the drydock following completion of drydock Work; provided, however, Supplier shall direct the tug Supplier regarding positioning of the Vessel into and out of the drydock. Supplier shall mark the tie-up spot and shall provide safe wharfing and berthing services including, but not limited to, safe guiding, spotting, and tying-up of the Vessel into place when the Vessel arrives at the Location, letting-go of the Vessel when the Vessel departs the Location, and line and anchor handling. Supplier shall assume the responsibility of the Vessel once it enters the drydock.
- D. If the Location is owned by or leased to Customer or another location arranged by Customer pursuant to a mooring agreement, Supplier shall provide direction for positioning of the Vessel within the berth.

3. Acceptance of Terms and Conditions. Supplier agrees that failure to notify Customer of any objection Supplier may have to any of the terms or conditions of the Agreement within five (5) calendar days after receipt by Supplier of the Agreement shall constitute acceptance of the Agreement, and Supplier shall be obligated to perform according to its terms. Such objection, if any, must be in writing and specify the grounds on which it is made, and Supplier shall not be deemed to have objected to any of the terms and conditions of the Agreement by sending a form or invoice containing terms or conditions which vary from any of the terms or conditions of the Agreement. In all events, either arrival of the Vessel at the Location or commencement of any Work by Supplier shall be conclusive evidence of the acceptance of the Agreement.

4. Milestones, Meetings and Reports.

A. Milestones.

- i. General. Supplier will prepare an implementation plan (the "Implementation Plan") that identifies milestones, and the Work associated with the milestones, the dates for completion of milestones, and identification of Supplier's representative who will have direct management of the Work ("Supplier's Lead Representative").
- ii. Failure to Meet a Milestone. If Supplier fails to meet a milestone by its applicable date, Supplier will promptly:
 - a) Investigate, assemble, and preserve pertinent information with respect to, and report on the causes of, the failure;
 - b) Advise Customer, as and to the extent requested by Customer, of the status of remedial efforts being undertaken with respect to such problem;

- c) Reduce the impact of and, if within Supplier's reasonable control, correct the failure;
- d) Take reasonable measures to seek to prevent similar failures; and
- e) Take reasonable actions to provide that such failure will not further impact delivery of the Work.

B. Meetings. Customer and Supplier will conduct meetings to review the status of the Work once a week. The type of meetings, meeting participants, and the framework for meetings will be in a manner as mutually agreed between the parties. The meetings may be conducted by telephone conference call, at the request of either party.

C. Reports. Supplier will provide weekly reports during the term of the Agreement, to be reviewed during the meetings referenced in above, including, at a minimum:

- i. Detailed reporting of project status against the Implementation Plan;
- ii. Detailed explanation of any variances that have occurred in schedule or in cost and their impact;
- iii. A list of any anticipated variances in schedule or in cost that may occur and their impact;
- iv. Detailed reporting of labor hours by quantity and type (e.g., straight time, overtime, holiday time, etc.); and
- v. Detailed reporting regarding cost of materials

D. Inspection of Work. Supplier shall give Customer free access to all parts of the Work at all times, and shall provide sufficient safe and proper facilities at all times for the inspection of the Work (including, without limitation, equipment and goods purchased by Supplier for the Vessel) by Customer, Customer's authorized representatives, the American Bureau of Shipping ("ABS"), the U.S. Coast Guard, and any other appropriate public authorities with jurisdiction. Supplier acknowledges and agrees that neither Customer nor any consultant hired by Customer is under any obligation to inspect the Work or discover defects or deficiencies in the Work. The inspection, observation or acceptance of the Work by Customer, ABS or the U.S. Coast Guard or any other public authority with jurisdiction shall not in any way constitute an acceptance of defective, deficient, or improper Work (unless stated by Customer in writing with specific reference to such defect). Similarly, the failure of the Customer or any such consultants, ABS or the U.S. Coast Guard or any authorities to discover or give notice of any defects, deficiencies or other improper Work shall not constitute a waiver or acceptance thereof and shall not in any way affect, reduce or relieve Supplier of its responsibilities to Customer under the Agreement (including, without limitation, Supplier's warranty responsibilities under Section 11 hereof).

E. Change in Supplier's Lead Representative. Supplier shall provide Customer notice of a change in Supplier's Lead Representative not more than two (2) business days after the change has occurred.

5. Changes.

A. Customer may request changes to the Work or otherwise within the general scope of the Agreement. A change will only take effect if it is executed in writing by both parties, which for this purpose includes an exchange of emails following verbal communication between Customer and Supplier's Lead Representative.

B. For Purchase Orders that provide for a fixed price, if a change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the Agreement, an equitable adjustment shall be made in the price and/or time schedule, and the Agreement shall be modified in writing accordingly. Work on changes shall not begin until the value of an equitable adjustment is agreed upon by Supplier and Customer in writing.

Notwithstanding the foregoing, the decision to accept or reject a requested change shall be left solely to the discretion of Customer.

6. Safety Procedures. Supplier shall ensure that its personnel and all subcontractors always abide by Customer's safety policies and procedures while aboard the Vessel. A copy of these policies and procedures is available upon request.
7. NON-DISCRIMINATION. THE AGREEMENT IS SUBJECT TO THE REQUIREMENTS OF 41 CFR 60-1.4 AND 29 CFR PART 471, APPENDIX A TO SUBPART A, WHICH ARE INCORPORATED INTO THE AGREEMENT BY REFERENCE, AS APPLICABLE, AND TO THE REQUIREMENTS OF 41 CFR 60-300.5(A) AND 41 CFR 60-741.5(A), WHICH ARE INCORPORATED HEREIN BY REFERENCE, AS APPLICABLE. THE LATTER TWO REGULATIONS PROHIBIT DISCRIMINATION AGAINST QUALIFIED INDIVIDUALS ON THE BASIS OF PROTECTED VETERAN STATUS AND DISABILITY AND REQUIRE AFFIRMATIVE ACTION TO EMPLOY AND ADVANCE IN EMPLOYMENT PROTECTED VETERANS AND QUALIFIED INDIVIDUALS WITH DISABILITIES.
8. Compliance with Laws. Supplier shall comply with and shall cause each subcontractor and sub-subcontractor (of any tier) to comply with, the requirements of all applicable federal, state, local and other laws, rules, and regulations, including, without limitation, of the Occupational Safety and Health Administration.
9. Payments Terms.
 - A. Customer shall pay for Supplier's performance of the Work in accordance with the terms set forth in the Purchase Order. Supplier shall invoice Customer for all services and materials related to the Work with line-item cost breakdowns. Invoices are payable in United States funds for US suppliers, and invoices are payable in Canadian funds for Canadian suppliers. Except as otherwise provided in the Agreement, the contract price includes all applicable federal, state, and local duties or sales, use, excise, value added or similar taxes. Payment of undisputed amounts on each invoice shall be due per the payment terms contained in the Purchase Order. Customer may withhold a payment in whole or in part, to such extent as may be necessary in Customer's opinion to protect Customer from loss for which Supplier is responsible, including, without limitation, because of (i) defective Work not remedied; (ii) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to Customer is provided by Supplier; (iii) failure of Supplier to make payments properly to subcontractors or for labor, materials or equipment, or to obtain any required lien waivers; (iv) reasonable evidence that the Work cannot be completed for the unpaid balance of the contracted price; (v) damage to Customer; (vi) failure to complete any portion of the Work on or before the milestone date therefor or reasonable evidence that any portion of the Work will not be completed within the time set forth in the Implementation Plan for such Work, or reasonable evidence that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; (vii) Supplier's failure to perform its obligations under this Agreement; (viii) erroneous estimates by Supplier of the value of the Work performed; or (ix) Supplier's failure to provide weekly reports as required in Section 4 hereof. When Supplier satisfies the applicable reason(s) for withholding payment, Customer will pay the amounts previously withheld.
 - B. Customer shall not have responsibility for payments to a subcontractor or supplier. Supplier shall promptly pay each subcontractor and supplier, upon receipt of payment from Customer, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.
10. Insurance.

- A. Supplier shall carry, at its expense, sufficient insurance on all equipment and goods ordered pursuant to the Agreement prior to delivery to Customer. Supplier, at its expense, shall at all times carry comprehensive general liability insurance covering bodily injury and property damage claims with a limit of at least \$10,000,000 (ten million) per occurrence. Such insurance shall include the following coverages: contractors' liability, products/completed operations, business interruption, contractual liability, and ship repairing liability if applicable. This insurance shall delete any exclusions for watercraft or work thereon. Supplier shall also maintain other insurance of a kind and in an amount generally carried by businesses engaged in the same or similar businesses similarly situated, including, but not limited to, workers compensation, longshoreman's and harbor workers compensation insurance in accordance with all applicable State and Federal laws and Employer's Liability insurance with a limit of at least \$4,000,000 (four million) each accident.
- B. Supplier shall cause its insurer to name Customer as an additional insured on the required general liability policy per ISO endorsement CG2037 or equivalent, and indicate that Supplier's insurance will be primary and shall not be contributory to any insurance maintained by Customer. All policies will waive insurers' rights of subrogation against Customer where allowed by law. Prior to commencing the Work, Supplier shall provide Customer a certificate of insurance that evidence that such insurance coverages and requirements are being met and are in full force and effect. Supplier shall immediately notify Customer in the event that a notice of cancellation is issued for any of the above-described insurance for any reason. Supplier shall provide no less than thirty (30) days prior written notice of renewal of the insurance required herein. All deductibles and retentions which apply to Supplier's insurance shall be for the account of Supplier exclusively.

11. Warranty.

- A. Supplier warrants to Customer that all Work performed by Supplier (i) will be new, merchantable and of good material and workmanship, free from all defects; (ii) will be as described in the Purchase Order or any quotation of Supplier referenced herein or attached hereto and will conform to all drawings, specifications and/or samples supplied by Supplier; (iii) will be fit for the particular purposes for which same are required by Customer (which purposes are known to Supplier and Supplier acknowledges that Customer is relying upon Supplier's skill and judgment to furnish suitable goods and services); (iv) will be in accordance with good marine practice, the engineering and design standards generally accepted in the industry including Transport Canada, U.S. Coast Guard and ABS standards for vessels with the class A1, Great Lakes Service, , AMS, ACC, whether or not applicable to Customer's vessels; and (v) will be manufactured, performed and/or delivered in compliance with all applicable federal, state, local and other laws, rules and regulations, including, without limitation, of the Occupational Safety and Health Administration. Work, materials or equipment not conforming to these requirements shall be considered defective. Supplier agrees that all guarantees or warranties of equipment or materials furnished to Supplier or its subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of, and are hereby assigned to, Customer. All warranties provided in this Agreement shall, with respect to the then completed portions of the Work, survive any termination of this Agreement by Customer due to the fault, error, negligence, or breach of contract of Supplier. Any defect in the work performed by Supplier may cause significant losses to Customer, and Supplier agrees to indemnify Customer from any such losses.
- B. Supplier shall promptly repair defective Work that occurs and repair or replace (at Customer's option) defective items incorporated into or used in conjunction with the Work. Supplier shall perform such repairs and/or replacements at the time designated by Customer (which, due to the nature of the scheduling of the Vessel, may

be substantially after such defects are discovered). If Customer is unable to make the Vessel available to Supplier for performance of warranty work within a time acceptable to Customer, Customer shall have the right to have the repair or replacement performed elsewhere and Supplier shall pay for the cost of such repair or replacement as invoiced.

- C. The warranties of Supplier in this section do not apply to normal wear and tear, abuse, neglect or other improper use, maintenance, or repair (provided, however, that delays described under Section 11(B) hereof shall not constitute grounds for any exclusion of coverage under Supplier's warranties).
- D. All Work will be free and clear of all liens, security interests or other encumbrances. Supplier shall promptly discharge, cause to be discharged or make adequate provision for discharge of any and all mechanics and materialmen liens filed by any subcontractor or sub-subcontractor in connection with the Work, and shall be responsible to resolve and pay any claims made by a subcontractor or sub-subcontractor in connection with the Work, provided only that Customer has paid the amounts due to Supplier pursuant to the Agreement for the Work that is the subject of any such lien. Supplier shall indemnify, defend and hold harmless Customer from any claims or mechanic's liens brought against Customer or against the Vessel as a result of the failure of Supplier, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. If Supplier fails to do so, Customer will have the right to discharge the claim or lien and, in Customer's sole discretion, withhold payment to Supplier, or hold Supplier liable, for costs and expenses incurred, including attorneys' fees.
- E. Supplier represents and warrants that all Work provided under this Agreement does not and shall not infringe or misappropriate any third party's intellectual property rights.
- F. Supplier represents and warrants that, it is the owner or has obtained all necessary rights in and to the Work, in order to convey all rights conveyed hereunder.

12. Hazardous Materials.

Upon request, Customer shall provide Supplier with information regarding any hazardous materials located in, on, or about the Vessel.

13. Fire Prevention and Hot Work Protection.

- A. Hot Work. "Hot Work" means any process or work that has a potential to start fires or cause an explosion due to the production of flames, heat, and/or sparks in the presence of flammable or combustible materials or vapors. Hot Work includes, but is not limited to, welding, cutting, brazing, soldering, grinding, pipe tapping, whether any of the foregoing is performed by electrical, gas, or plasma device, use of open flames, use of hot air blowers, boilers, and heaters, and electrical work in flammable or explosive atmospheres or near flammable or explosive materials.
- B. Supplier shall perform all Hot Work in accordance with the requirements of the National Fire Protection Association (NFPA) Standard 51B, Standard for Fire Prevention During Welding, Cutting, and Other Hot Work, as may be amended from time to time, as well as any applicable federal, state, or local laws. To the extent any conflict exists between this Agreement and NFPA Standard 51B, the terms of this Agreement control.

- C. Qualifications. Supplier shall ensure that all personnel performing Hot Work are licensed, certified, or otherwise qualified to perform Hot Work.
- D. Fire Watch. At any time Hot Work is performed, Supplier shall furnish, at Supplier's expense, a fire watch in all areas in which Hot Work is performed, and in adjacent spaces, for a period of time beginning with the commencement of the Hot Work and ending no less than one (1) hour after the completion of the Hot Work. Supplier must also continue routine inspections, to occur no less than hourly, for three (3) hours following the conclusion of the fire watch. Any employee or contractor of Supplier performing a fire watch may have no other duties, responsibilities, or assignments during the time of the fire watch or subsequent routine inspections.
- E. Permitting. At any time Hot Work is performed, Supplier shall complete and furnish to Customer a Hot Work Permit specifying the nature of the Hot Work performed, the location of the Hot Work performed, the time the Hot Work began, the time the Hot Work concluded, the name(s) of the individual(s) performing the Hot Work, and the name(s) of any individual(s) standing a fire watch, in addition to any other federal, state, or local requirements for the performance of hot work. A new Hot Work Permit must be completed at least each day on which Hot Work occurs. A copy of the Suppliers Hot Work Program must be furnished to Customer prior to commencement of Hot Work.
- F. Open Flames and Space Heaters Prohibited. Supplier shall not employ any equipment, other than equipment necessary for the performance of Hot Work, which casts an open flame, including, but not limited to, matches or lighters. Supplier shall not utilize any space heaters or similar portable heat generating devices during any Work. Smoking is prohibited at any location where Supplier performs any Work, including, but not limited to aboard any vessel.
- G. Supplier shall provide, at its sole cost and expense, enough fire extinguishers to satisfy federal, state, or local requirements, or in a sufficient number to extinguish fire in the event of an emergency. Supplier's fire extinguishers must be in good and working order and inspected and certified by a licensed fire extinguisher certification company. A minimum of two (2) extinguishers is required per project.

14. Force Majeure.

- A. No delay or failure in performance by either party hereto shall constitute default hereunder or give rise to any claim for damages if, and to the extent, such delay or failure is caused by force majeure. Unless such force majeure substantially frustrates performance of the Agreement, force majeure shall not operate to excuse, but only to delay, performance.
- B. Force majeure is an occurrence beyond the control and without the fault or negligence of the party affected and which said party is unable to prevent or provide against by the exercise of reasonable diligence including, but not limited to: acts of God or the public enemy; expropriation or confiscation of facilities; changes in applicable law; war, rebellion, civil disturbances, sabotage or riots, floods, unusually severe weather that could not reasonably have been anticipated; fires, explosions, or other catastrophes; strikes or any other concerted acts of workers; other similar occurrences.
- C. The party affected by the force majeure occurrence shall:

- i. Notify the other party in writing immediately upon becoming aware of the force majeure event, of the nature, start date and expected duration of the force majeure occurrence and the extent to which it will prevent the affected party from performing its obligations under the Agreement;
- ii. Make every reasonable effort to overcome the effect of the force majeure occurrence; and
- iii. Commence and continue performance of all its obligations, with diligence as soon as the force majeure occurrence no longer has an effect on it.

D. In addition to Customer's rights to terminate the Agreement pursuant to Section 16 hereof, should a Force Majeure occurrence continue for a continuous period of thirty (30) days, either party shall be entitled to terminate the Agreement or part thereof. Should Supplier elect to terminate the Agreement as per this Section 14, Customer will only be responsible for any payments due under the Agreement. Should Customer elect to terminate as per this Section 14, Customer will be deemed to have terminated pursuant to Section 16(A) hereof.

E. The parties agree that no compensation for damages of whatsoever nature shall be allowed hereunder for termination of the Agreement pursuant to this Section 14 and that termination of the Agreement pursuant to this Section 14 shall release the parties from any and all obligations towards each other with respect to the cancelled portion of the Agreement.

F. The Implementation Plan shall be adjusted only when agreed in writing between the parties or when necessary to reflect any actual and unavoidable delay in the performance, execution or completion of the Agreement occasioned by force majeure; provided that the parties have complied with the requirements set forth in this Section 14 and have given timely written notice of its claim for a time extension.

15. Data Security.

A. Supplier shall establish and implement information security policies, processes, and procedures that govern, among other things, security management, identity and account management, data protection, software security, system or platform security, network security and physical security. Supplier shall not post any information or inquiry to any public forum including, but not limited to, internet newsgroups, for which said information can be traced or related to Customer. Supplier shall monitor, on a regular basis, reputable sources of computer security vulnerability information such as FIRST, CERT/CC and Supplier mailing lists, and take appropriate measures to obtain, thoroughly test and apply relevant, fixes, service packs, patches, upgrades, and workarounds. Critical fixes/patches should be tested and implemented by Supplier in an expedient manner. All other fixes should be implemented within a commercially reasonable time period. Supplier agrees that it will deploy multiple layers of defense including, but not limited to firewalls, network intrusion detection and host-based intrusion detection to increase the effort required to compromise networks, systems, or applications and to increase the probability that such attempts will be detected.

B. Supplier agrees that it will maintain all systems and networks to provide services under the Agreement in secure facilities owned, operated, or contracted for by Supplier.

C. Supplier agrees that it will:

- i. Use commercially available virus and malicious code detection and protection product(s) on all networks, systems, and workstations used to provide services under the Agreement.

- ii. Maintain installed virus and malicious code detection and protection product(s) at the latest available software and signature levels.
- iii. Report all occurrences of viruses and malicious code not handled by deployed detection and protection measures on systems to Customer within twenty-four (24) hours of discovery.
- iv. Immediately upon Supplier's receipt of notice, knowledge, or other determination that Supplier has introduced any vulnerability in any manner and whether directly or indirectly, Supplier shall provide Customer written notice detailing such vulnerability.

D. In addition to the other indemnities contained in the Agreement, Supplier shall defend, indemnify and hold Customer, and officers, directors, employees, agents, predecessors, successors, assigns and its customers (whether direct or indirect) against Claims which they, or any of them, may sustain or incur as a result of (i) Supplier's or its contractors data breach or release of Customer's or Customer's customers personally identifiable information or other information protected by applicable any federal, provincial, state, local or foreign constitution, statute, law, ordinance, rule, regulation, license, permit, authorization, registration, policy or order; and (ii) any malware or vulnerabilities introduced, directly or indirectly, by Supplier.

16. Termination of the Agreement.

- A. For Convenience. Customer may, at any time, terminate this Agreement for the Customer's convenience and without cause. In such event, Supplier shall be entitled to receive payment for Work properly executed, and costs directly incurred by reason of such termination; provided, however, that neither Supplier nor any of its subcontractors shall be entitled to any reimbursement for (i) any continuing contractual commitments to subcontractors, or penalties or damages for cancelling such contractual commitments; or (ii) anticipated profit, unperformed services, intangibles or consequential damages. Supplier agrees, to the extent possible, to minimize cost or expense charged to Customer under this paragraph. Notwithstanding anything herein to the contrary, Customer reserves the right to revoke the Agreement at any time before Supplier is deemed to have accepted the Agreement without penalty or other charge to Customer whatsoever.
- B. For Cause. Customer may terminate the Agreement at any time without any liability to Supplier (i) upon the bankruptcy, insolvency or appointment of a receiver of Supplier; (ii) upon failure of Supplier to deliver the Work in strict conformity with the terms of the Agreement; (iii) upon failure to make payment to subcontractors for materials or labor in accordance with the respective agreements between Supplier and the subcontractors or (iv) upon default or breach by Supplier of any of the terms of the Agreement or any other agreement or contract between Supplier and Customer. Following such termination, if the costs of finishing the Work exceed the unpaid balance of the Contract Price, Supplier shall pay the difference to Customer.
- C. Time of the Essence. Time is of the essence with respect to the performance of Work under this Agreement. Any delay caused by Supplier may cause significant losses to Customer. The terms of this Agreement shall survive its cancellation.

17. Indemnification.

- A. Supplier shall defend, indemnify and hold harmless Customer, its parents, subsidiaries, and its affiliates and their respective directors, officers, employees and agents and the successors and assigns of each of the foregoing (collectively, "Customer Indemnitees"), from and against any and all claims, demands, causes of action, damages and costs, including attorneys' fees and court costs incurred by, sustained by, or asserted against any of the

Customer Indemnitees arising out of or in any way relating to (i) the performance of the Work, (ii) any breach by Supplier of any term or provision of the Agreement (including any breach of any representation and/or warranty made by Supplier in the Agreement); (iii) any act, omission, misrepresentation, conduct, negligence or product liability on the part of Supplier, a subcontractor, or any of Supplier's or a subcontractor's directors, officers, employees or agents whether accidental or intentional; and (iv) if any Work sold or furnished hereunder shall be covered by any patent, copyright or trademark, or any application therefor or license thereof, the use, sale or furnishing of such items in violation of rights under such patent, copyright, trademark, application or license.

- B. Supplier shall protect, defend, indemnify, hold harmless, and release Customer Indemnitees from and against any and all claims, demands, causes of action, damages and costs, including attorneys' fees and court costs, for personal injury, illness or death, or loss of or damage to property incurred by any Third Party, to the extent such personal injury, illness or death, or loss of or damage to property is proximately caused by the fault or negligence of Supplier.
- C. Customer shall protect, defend, indemnify, hold harmless, and release Supplier from and against any and all claims, demands, causes of action, damages and costs, including attorneys' fees and court costs, for personal injury, illness or death, or loss of or damage to property incurred by any Third Party, to the extent such personal injury, illness or death, or loss of or damage to property is proximately caused by the fault or negligence Customer.

For purposes of this Section 17, the term "Third Party" means entities other than Supplier and Customer, and their respective employees, subcontractors, and agents.

18. Waivers and Modifications.

- A. This Agreement is issued subject to acceptance of the Terms and Conditions set forth herein. The Terms and Conditions of this Agreement from the sole and exclusive contractual relationship between the parties. Customer specifically rejects any terms and conditions of Supplier as set forth in any quote, proposal, or other agreement, whether written or verbal, in favor of the Terms and Conditions of this Agreement. Supplier's performance of Work as specified in this Agreement constitutes Supplier's irrevocable acceptance of and agreement to be bound by the Terms and Conditions of this Agreement.
- B. The Agreement contains the whole of the terms and conditions agreed by the parties with respect to the subject matter thereof and no representation, promise or undertaking made or given by either party prior to the date of the related Purchase Order shall be of any force or effect, unless the same is contained in the Agreement. If there is any conflict between any provision of these Terms and Conditions and the Purchase Order, the provisions of the Purchase Order shall prevail.
- C. Except as set forth in Section 5, no amendment of the Agreement shall be of any force or effect, unless made in writing and signed by the parties thereto.
- D. No breach of any provision of the Agreement shall be deemed waived unless it is waived in writing. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or any other provision of the Agreement.

- E. Except to the extent expressly provided to the contrary, the rights and remedies set forth in this Agreement are cumulative and not exclusive of one another. The rights and remedies set forth in this Agreement are also in addition to any other rights or remedies available at law, in equity, or otherwise.

19. Assignment.

Supplier shall not assign the Agreement without the prior written consent of Customer.

20. Confidentiality.

- A. Customer may provide to Supplier certain technical and business information related to the Work that involves technology and/or new processes which as of the date of the Purchase Order are not required by or encompassed by pending regulations of a regulatory authority. Such technical and business information may include technical, manufacturing, or engineering information, formulas, algorithms, processes, know-how, data, data structures, source code, programmers' notes, software tools developments, designs, inventions, or ideas, and all related documentation, whether in hard copy or electronic format (collectively, the "Confidential Information").
- B. Supplier shall not publish, disclose or otherwise disseminate such Confidential Information, except to such of Supplier's employees and agents or to a subcontractor and its employees and agents who have a need to know to accomplish the purposes of the Agreement, and then only if such persons previously have agreed in writing to handle and maintain such Confidential Information in accordance with the provisions, or substantially similar provisions, of this Section 20.
- C. Supplier shall maintain such Confidential Information in a safe and secure place using the safeguards set forth in Section 20, which safeguards shall be no less than the safeguards the Supplier takes to protect its own confidential or proprietary items of a similar nature.
- D. If Supplier learns of any unauthorized use or disclosure of such Confidential Information as a result of the acts or omissions of its employees and agents, or the acts or omissions of a subcontractor's employees and agents, Supplier shall provide prompt written notice of such use or disclosure to Customer, and Supplier shall take all reasonable steps requested by Customer to limit the effects of such use or disclosure and to prevent any further unauthorized use or disclosure. Supplier shall be responsible for the acts or omissions of any persons or entities receiving that Confidential Information to the extent such acts or omissions would constitute violations of this Section 20 or the Agreement by Supplier.
- E. Supplier agrees and acknowledges that the Confidential Information is the sole and exclusive property of Customer, and that this Agreement grants no rights in the Confidential Information to Supplier. Supplier shall refrain from using, selling, promoting, or assisting any entity with any part of the Confidential Information.
- F. Supplier acknowledges that Customer would be damaged monetarily by Supplier's breach of the provisions of this Section 20, and Supplier agrees to compensate, pay, and indemnify Customer from any losses whatsoever, including reasonable attorneys' fees, resulting from Supplier's breach of the provisions of this Section 20.
- G. Upon Customer's written request, Supplier will either: (a) return to Customer all copies of the Confidential Information and any other tangible material embodying or containing Confidential Information, including all

Confidential Information in Supplier's possession; or (b) destroy every copy and any other tangible material embodying or containing Confidential Information, including all Confidential Information in Supplier's possession, and deliver to Customer within ten days a written statement certifying such destruction.

21. Customer's Intellectual Property.

Supplier shall not use the name or any logo, trademark, or service mark of Customer in any of its advertising or promotions without Customer's prior written consent.

- A. In consideration of Customer's payment obligations set out in Section 9 (Payment Terms), Supplier hereby irrevocably assigns and transfers to Customer all of Supplier's right, title, and interest in and to the Work, including all associated intellectual property rights. Supplier shall provide all requested supporting documentation to Customer to perfect the assignment of all right, title and interest, including in all intellectual property rights. By way of clarification, and not limitation, Supplier acknowledges and agrees that Customer shall own all Work provided pursuant to this Agreement.
- B. Supplier shall cooperate with the Customer, both during and after the Term of this Agreement, in the procurement and maintenance of intellectual property rights and to execute, when requested, any other documents deemed necessary to carry out the purpose of this Agreement.

22. Governing Law.

The Agreement is maritime in nature, and the parties agree that, to the extent permissible by law, the Agreement shall be interpreted, governed and construed in accordance with the General Maritime Law of the United States, excluding any conflict of law principles which would otherwise require the application of the substantive law of another jurisdiction. In those situations where maritime law is not applicable, this Agreement shall be interpreted, governed, and construed in accordance with the substantive laws of the State of New York, without regard to any conflicts of laws principles that could require the application of the substantive laws of another jurisdiction.

23. Dispute Resolution.

Any disputes, controversies or claims (collectively, "Disputes") arising out of or in relation to or in connection with this Agreement, including, without limitation, any Disputes as to the construction, validity, interpretation, enforceability or breach of the Agreement, shall be exclusively resolved by arbitration conducted in the City of New York in accordance with the Rules of the Society of Maritime Arbitrators, Inc. ("SMA"). The Dispute shall be referred to three (3) persons, one (1) to be appointed by each of the parties hereto, and the third by the two (2) so chosen; their decision or that of any two (2) of them shall be final. The arbitrators need not be members of the SMA. Until such time as the Arbitrators formally close the hearings, either Party shall have the right by written notice served on the Arbitrators and on the other Party to specify further disputes or differences under this Agreement for hearing and determination. The Arbitrators may grant any relief which they, or a majority of them, deem just and equitable and within the scope of the Agreement, including, but not limited to, specific performance. Awards made pursuant to this Clause may include costs, including a reasonable allowance for attorney's fees and costs of arbitration, and judgment may be entered upon any award made hereunder in any Court having jurisdiction in the premises. The Parties further submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York for purposes of enforcement of any award rendered hereunder.

24. Notices.

The official contact details of the parties for the purpose of the Agreement are as set forth in the Purchase Order, but either party may change the same by notice in writing to the other party.

All notices hereunder shall be in writing and shall be sufficient if sent by registered mail, overnight courier with a required signature upon receipt, or e-mailed to the party entitled thereto at the above address.

25. Independent Contractor.

The parties intend that an independent contractor relationship will be created by the Agreement. The officers, employees, and agents of one party shall not be considered officers, employees, or agents of the other party for any purpose whatsoever.

26. Section Headings.

Headings used in the Agreement are for convenience and are not intended to be limiting in any way.

27. Severability.

If in any jurisdiction, any provision of the Agreement or its application to any party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions thereof and without affecting the validity or enforceability of such provision in any other jurisdiction or its application to other parties or circumstances.

28. Security Requirements.

The following security requirements apply for all work on customer's property:

- A. Supplier shall supply a list of all personnel to be employed on site and are subject to verification and identity check.
- B. Supplier personnel must have valid passports, always carry appropriate identification, and eligible for admission to the United States of America if applicable.
- C. Supplier personnel are to be reliable, trustworthy, and fully bondable.

29. Records to be provided to Supplier.

Supplier is to maintain records of his estimated and actual cost of the work, not limited to but including call minutes, quotations, contracts, correspondence, invoices, and receipts to provide the following to the customer:

- A. Weekly labor & material usage reports in a format agreed by customer to the customer on a weekly basis until the contracted work has been completed to satisfaction of the customer;
- B. Estimated costs and time to complete work reports in a format agreed by customer to the customer on a weekly basis; and
- C. Supplier shall cause all subcontractors and personnel directly and indirectly controlled by or affiliated with Supplier and all personnel having control of Supplier to comply with all terms and conditions of this Agreement.

30. Invoices.

Send invoices to Rand Logistics, Inc., Attn: Accounts Payable, 500 Essjay Road, Suite 200, Williamsville, NY 14221.

31. Purchase Order Number.

The Purchase Order Number must appear on all related papers, packages, invoices, etc.