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GENERAL CONDITIONS

Definitions and Interpretations

Definitions

- 1.1 In construing the Contract, the following words and expressions shall have the following meanings hereby assigned to them.
- 1.1.1 'Change' means any alteration of the Works whether by way of addition, modification or omission.
 - 1.1.2 'Conditions' means these General Conditions and any Special Conditions included in this Contract.
 - 1.1.3 'Contract' means the agreement between the Purchaser and the Contractor (howsoever made) for the execution of the Works including the Purchase Order, Contract Agreement, Instructions to Bidders, Proposal Forms, the Conditions, Specifications, the Drawings (if any) annexed thereto, such schedules as are referred to therein, and remaining Bid Package documents.
 - 1.1.4 'Contractor' means the person, firm or corporation having a contract with the Purchaser for the execution of the Works and the legal successors in title to the Contractor, but not an assignee.
 - 1.1.5 'Contractor's Equipment' means all appliances or things of whatever nature required for purposes of the Works but does not include Plant or other things intended to form or forming part of the Works.
 - 1.1.6 'Contract Price' means the sum stated in the Contract as the price payable to the Contractor for the execution of the Works.
 - 1.1.7 'Contract Value' means such part of the Contract Price, adjusted to give effect to such additions or deductions as are provided for in the Contract as is properly apportioned to the Plant or work in question. In determining Contract Value, the state, condition and topographical location of the Plant, the amount of work done and all other relevant circumstances shall be taken in to account.
 - 1.1.8 'Cost' means all expenses and costs incurred including overhead and financing charges properly allocated thereto with no allowance for profit.
 - 1.1.9 'Day' means calendar day and 'Business Day' means Monday through Friday excluding holidays.
 - 1.1.10 'Defects Liability Period' has the meaning assigned by Clause 29.2 (Defects Liability).
 - 1.1.11 'Force Majeure' has the meaning assigned by Clause 21.1 (Meaning of Force Majeure).
 - 1.1.12 'Month' means calendar month.
 - 1.1.13 'Performance Tests' means the tests (if any) detailed in the Specification or in the performance test schedule otherwise agreed to between the Purchaser and the Contractor to be made after the Works have been accepted to demonstrate the performance of the Works. This includes commissioning, system fill and adjustments as needed as a prerequisite to Final Acceptance.

- 1.1.14 'Plant' means machinery, computer hardware and software, apparatus, materials, articles and things of all kinds to be provided under the Contract other than the Contractor's Equipment.
- 1.1.15 'Proposal' means the Contractor's priced offer to the Purchaser for the execution of the Works.
- 1.1.16 'Purchaser' means DAIFUKU AMERICA CORP. and its legal successors in title.
- 1.1.17 'Purchaser's Representative' means the person or persons appointed and authorized by the Purchaser to represent it regarding the management and construction of the project.
- 1.1.18 'Schedule' means the schedule referred to in Clause 17 (Schedule).
- 1.1.19 'Sections of the Works' or 'Section' means the parts into which the Works are divided.
- 1.1.20 'Site' means the actual place or places provided or made available by the Purchaser to which Plant is to be delivered or where work is to be done by the Contractor, together with so much of the area surrounding the same as the Contractor shall, with the consent of the Purchaser, actually use in connection with the Works other than merely for purposes of access.
- 1.1.21 'Specification' means the specification of the Works annexed to or included in the Contract including any modifications thereof made under Clause 19 (Changes).
- 1.1.22 'Subcontractor' means any party who agrees to assume a portion of the Contract from the Contractor and agrees to construct a portion of the Works for which the Contractor has been engaged to construct under its contract with the Purchaser.
- 1.1.23 'Final Acceptance' means the point in time when the Purchaser has accepted the Works as sufficiently complete for the purpose for which it is intended and the Contractor has complied with its obligations under the Contract.
- 1.1.24 'Tests on Installation' means the tests specified in the Contract (or otherwise agreed to by the Purchaser and the Contractor) which are to be made by the Contractor upon completion of Assembly and/or installation before the Performance Tests. This includes manual and auto system try-out without product.
- 1.1.25 'Time for Completion' means the period of time for Completion of the Works or any Section thereof as stated in the Contract or as extended under Clause 20.2 (Time Extension Requests) calculated from whichever is the later of:
 - 1.1.25.1 The date specified in the Contract or Purchase Order as the date for commencement of the Works; or
 - 1.1.25.2 The date any necessary legal, financial or administrative requirements specified in the Contract as conditions precedent to commencement have been fulfilled.
- 1.1.26 'Week' means any period of seven (7) days
- 1.1.27 'Works' means all Plant to be provided and work to be done by the Contractor under the Contract.
- 1.1.28 'Writing' means any hand-written, type-written or printed statement.

Interpretation

- 1.2 Words interpreted as persons or parties shall include firms, corporations and any organization having legal capacity.

Singular and Plural

- 1.3 Words interpreted as singular only may also include the plural (and vice versa) where the context requires.

Notices and Consents

- 1.4 Wherever provisions are made in these conditions for the giving of notice or consent by any person, unless otherwise specified, such notice or consent shall be in writing and the word 'notify' shall be construed accordingly. Any consent required of a party shall not be unreasonably withheld.

Headings and Marginal Notes

- 1.5 The heading or marginal notes in the Conditions shall not be deemed part thereof or be taken into consideration in the interpretation or construction thereof or of the contract.

Precedence of Documents

Order of Document Priority

- 2.1 Any inconsistency between provisions or sections of this Contract shall be resolved by giving precedence in the following order:
1. Change Order
 2. Purchase Order
 3. Contract Agreement
 4. Clarifications
 5. Addenda
 6. Pre-Bid Meeting Minutes
 7. Special Conditions
 8. Daifuku General Conditions
 9. Owner-supplied Special and General Conditions
 10. Specifications
 11. Drawings
 12. Proposal Forms (excluding Contract Agreement)
 13. Instructions to Bidders

Basis of Proposal and Contract Price

Contractor to be Fully Informed

- 3.1 The Contractor shall be deemed to have inspected the Site and to have satisfied itself as far as can be reasonably expected taking into account the Site conditions and all circumstances affecting the Site, (including any safety regulations of the Purchaser and Owner applicable thereto), if access has been made available to it, and to have examined the Conditions and Specifications, with such drawings, schedules, plans and information as may be annexed or referred to therein.

Site Data

- 3.2 The Proposal shall be deemed to have been based on such data on climatic, hydrological, soil and general conditions of the Site and for the operation of the Works as the Purchaser or the Owner has made available to the Contractor for the purposes of the Proposal. The Contractor shall be responsible for its own interpretation of such data.

Unexpected Site Conditions

- 3.3 In the case of underground work or work involving excavation where the actual conditions of the ground are not stated in the Contract or if rock, rocky soil, solid chalk, water, running sand, slag, pipes, concrete or other obstructions are found, and such conditions or obstructions could not reasonably have been ascertained from an inspection of the Site by the Contractor before it prepared the Proposal or from information made available to the Contractor for the purposes of the Proposal, or if it should be necessary to leave in timber or provide support for existing work (such necessity not having been indicated in the Contract), the Contractor shall immediately inform the Purchaser of the obstructions or hazards encountered and obtain the approval of the Purchaser to the steps it proposes to take to deal with the same. Site conditions that materially alter the Work shall be treated as a Change under Clause 19 (Changes).

Performance/Payment Bond or Guarantee

Provision of Bond or Guarantee

- 4.1 If required by the Purchaser, the Contractor shall provide the guarantee of a bank or the bond of a surety for the due performance of the Contract (Performance Bond) and/or for payment of any Subcontractors and Suppliers (Payment Bond) for work satisfactorily performed under the contract. Unless otherwise specified in the Contract, the Contractor shall provide the bond or guarantee at its own cost.

Failure to Provide Bond or Guarantee

- 4.2 If the Contractor shall have failed to provide the bond or guarantee within such further period as may be advised by the Purchaser, the Purchaser shall be entitled to terminate the Contract by seven days notice to the Contractor. In the event of termination under this Clause, the Contractor shall repay to the Purchaser all Costs properly incurred by the Purchaser incidental to the obtaining of new proposals plus the difference between the Contractor's bid price and the Contract Price finally awarded.

Bond Requirements

- 4.3 All bonds required by the Purchaser shall be obtained from surety companies duly licensed or authorized in the jurisdiction in which the Works is located to issue bonds for the limits and coverage's so required. Such surety shall also meet such additional requirements and qualifications as may be provided in the Special Conditions. All bonds signed by an agent of the Contractor must be accompanied by a certified copy of such agent's authority to act.

Any bond provided by the Contractor shall be issued from a surety listed in the most current edition of Circular 570 by the Fiscal Service, U.S. Department of the Treasury.

Purchaser and Purchaser's Representative

Purchaser's Duties

- 5.1 The Purchaser shall carry out such duties in issuing certificates, decisions, instructions and orders as are specified in the Contract.

Purchaser's Representative

- 5.2 The Purchaser's Representative shall be responsible to the Purchaser and shall watch and supervise the Works, and test and examine any Plant or workmanship employed in connection therewith. It shall have only such further authority as may be delegated to it by the Purchaser under Clause 5.3 (Purchaser's Power to Delegate).

Purchaser's Power to Delegate

- 5.3 The Purchaser may from time to time delegate to the Purchaser's Representative any of its duties and may at any time revoke such delegation.

Any written decision, instruction, order or approval given by the Purchaser's Representative to the Contractor, in accordance with such delegation, shall have the same effect as though it had been given by the Purchaser. If the Contractor disputes or questions any decision, instruction or order given by the Purchaser's Representative, the Contractor may refer the matter to the Purchaser who shall confirm, reverse, or vary the decision.

Purchaser's Decisions, Instructions and Orders

- 5.4 The Contractor shall proceed with the Works in accordance with the decisions, instructions and orders give by the Purchaser in accordance with the Contract.

Confirmation in Writing

- 5.5 The Contractor may require the Purchaser to confirm in writing any decision, instruction or order of the Purchaser which is not in writing. The Contractor shall make such request without undue delay.

Purchaser's General Obligations

Access to Site

- 6.1 The Purchaser shall give the Contractor access (but not exclusive access) to the Site on the instructed date. If no date is stated, then access shall be given in reasonable time having regard to the Time for Completion. The Purchaser shall provide such roads and other means of access to the Site as may be stated in the Specification, subject to such change and limitations as to use as may be imposed.

Furnished Equipment or Materials

- 6.2 Equipment or materials to be provided by the Purchaser shall be provided within the time specified in the Contract or in the Schedule shall be of the quality specified and in a condition suitable for the efficient transport, reception, installation and maintenance of the Works.

Utilities and Power

- 6.3 The Purchaser shall make available supplies such as electricity, water, air or other services, if any, as identified in the Special Conditions, at the Site for the Contractor. Such supplies shall be made available at the point(s) specified in the Contract on the terms mentioned in Clause 11.2 (Site Services).

Power etc. for Tests on Site

- 6.4 Where the Contract provides for any tests on Site, the Purchaser shall provide, free of charge, such fuel, electricity, materials, stores, water, and feedstocks as may be required and as may reasonably be requested by the Contractor to enable the tests to be carried out effectively. Costs of supplies made available under this clause associated with re-testing due to Contractor fault shall be at Contractor's expense.

Contractor's Obligations

General

- 7.1 The Contractor shall, subject to the provisions of the Contract, with due care and diligence, receive designed and manufactured Plant at the Site, erect and test the Plant, execute the Works and carry out the Tests on Completion within the Time for Completion. The Contractor shall, subject to Clause 6.4 (Power etc. for Tests on Site), provide all labor, skilled and unskilled, the supervision thereof and all Equipment necessary for the execution of the Works.

Manner of Execution

- 7.2 The Works shall be manufactured and executed in the manner set out in the Specification or where not so set out, to the reasonable satisfaction of the Purchaser, and all work on Site shall be carried out in accordance with such reasonable directions as the Purchaser may provide.

The Contractor shall assume full responsibility for the complete fabrication and installation with which it is contracted. Any conflict between the Contractor's standard shop fabrication and field installation practices and/or standard components and the Purchaser's drawings and/or specifications shall be brought to the Purchaser's attention and resolved prior to proceeding with that phase of the work involved. Compliance with drawings and/or specifications shall prevail, and Contractor shall not be entitled to additional cost or a time extension as a result of any conflict.

Codes and Permits

- 7.3 All work shall be executed in accordance with all governing ordinances, laws, and regulations, and shall meet the requirements of all local conditions. The completed Works shall meet all city, county and state health and air pollution agency requirements, U.S. Department of Labor rules and regulations, and Occupational Safety and Health Act standards. Any changes and/or additions required to meet these conditions shall be made at no additional expense to the Purchaser.

The Contractor shall obtain all permits and legal notices required for its trades. Absent language in the Contract to the contrary, the Contractor shall be responsible for paying all permit fees including connecting and inspection fees. After completion of the work, the Contractor shall deliver to the Purchaser all certificates of approval from the governing inspection authorities.

Additional Standards, Regulations or Procedures

- 7.4 The Contractor shall adhere to the following standards, regulations or procedures in addition to the bid documents:
- NEC, National Electrical Code
 - NFPA, National Fire Protection Association
 - ANSI American National Standards Institute

- ASA, American Standards Association
- OSHA, Occupational Safety and Health Act
- NEMA, National Electrical Manufacturers Association
- UL, Underwriter's Laboratories
- FM, Factory Mutual
- AWS, American Welding Society
- ASME, American Society of Mechanical Engineers
- AISC, American Institute of Steel Construction

In the event of a conflict or multiple approaches to the same topic, the more stringent standard, regulation or procedure shall be followed. The Contractor shall bring to the attention of the Purchaser any items which are in contradiction.

Drawings

8.1 The Contractor shall submit to the Purchaser for approval:

8.1.1 Within the times given in the Contract or Schedule, such drawings, samples, patterns, models or information (including calculations) as may be called for therein, and in the numbers therein required; and

8.1.2 During the progress of the Works, within such reasonable times as the Purchaser may require, such drawings of the general arrangement and details of the Works as may be specified in the Contract or as the Purchaser may reasonably require.

The Purchaser shall signify its approval or disapproval thereof. Drawings, samples, patterns and models shall be signed or otherwise identified by the Purchaser as Approved, Approved as Noted, or Rejected and/or Re-submit. If Purchaser fails to do so within the time given in the Contract or the Schedule, or if no time limit is specified, within thirty (30) days of receipt, they shall be deemed acceptable.

The Contractor shall supply additional copies of approved drawings in the form and numbers stated in the Contract.

Consequence of Disapproval of Drawings

8.2 Any drawings, samples, patterns or models which the Purchaser disapproves shall be modified and re-submitted without delay.

Approved Drawings

8.3 Approved drawings shall not be departed from except as provided in Clause 19 (Changes).

Inspection of Drawings

8.4 The Purchaser shall have the right at all reasonable times to inspect all drawings of any part of the Works.

Foundation etc. Drawings

- 8.5 The Contractor shall provide, within the times stated in the Contract or Schedule, drawings showing how the Plant is to be affixed and all other information required for:
- 8.5.1 Preparing suitable foundations or other means of support;
 - 8.5.2 Providing suitable access for the Plant and any necessary equipment to the point on Site where the Plant is to be erected; and
 - 8.5.3 Making necessary connections to the Plant.

Operating and Maintenance Instructions

- 8.6 Within the time or times stated in the Schedule, the Contractor shall supply operating and maintenance instructions. These shall be in such detail as will enable the Purchaser to operate, maintain, dismantle, reassemble and adjust all parts of the Works.

Instructions shall be supplied in the form and numbers stated in the Contract.

The Works shall not be considered to be complete for the purposes of Final Acceptance until such instructions have been supplied to the Purchaser.

As-built Drawings

- 8.7 Before final acceptance and payment for the work, the Contractor shall provide the Purchaser with one (1) marked up hard copy set of the layouts and sections in "As-built" condition which will be used by the Purchaser to create CAD drawings of the same.

Drawings and information supplied by the Contractor may be used by the Purchaser for the purposes of completing, maintaining, adjusting, repairing the Works and other purposes.

Contractor's Use of Drawings etc. Supplied by Purchaser or Owner

- 8.8 Drawings and information supplied by the Purchaser or the Owner to the Contractor for the purposes of the Proposal and the Contract shall remain the property of the Purchaser or the Owner. They shall not, without the consent of the Purchaser (or Owner, if applicable), be used, copied or communicated to a third party by the Contractor other than as strictly necessary for the purposes of the Contract.

Errors in Drawings etc. Supplied by Contractor

- 8.9 Notwithstanding approval by the Purchaser of drawings, samples, patterns, models or information submitted by the Contractor, the Contractor shall be responsible for any errors, omissions or discrepancies therein.

The Contractor shall bear any Costs it may incur as a result of delay in providing such drawings, samples, patterns, models or information or as a result of errors, omissions or discrepancies therein, for which the Contractor is responsible.

The Contractor shall at its own expense carry out, or bear the reasonable Cost of, any alterations or remedial work necessary by such errors, omissions or discrepancies for which it is responsible and modify the drawing, samples, patterns, models or information accordingly.

The performance of its obligations under this Clause shall be in full satisfaction of the Contractor's liability under this Clause, but shall not relieve Contractor of its liability under Clause 20.5 (Liquidated Damages).

Contractor's Quality of Work

- 9.1 The Contractor shall execute all work in accordance with the Purchaser's required quality of workmanship and construction standards. Any work which, in the Purchaser's opinion, does not meet these required standards shall be repaired, removed and/or reconstructed by the Contractor at no additional cost to the Purchaser. The Contractor will not be given an extension of time to correct unsatisfactory work.

All Subcontractor work shall be held to the same requirements as the Contractor.

Contractor's Supervision and Workers

- 10.1 The Contractor shall have a competent, full time Site Manager for the length of the Contract, a competent supervisor for each trade or composite trade working as a Subcontractor in addition to the supervisor provided by the other trades, and all assistants required during the entire installation period on the job site. All personnel must be approved by the Purchaser. All personnel which, in the Purchaser's opinion, prove unsatisfactory shall be replaced by the Contractor immediately upon request by the Purchaser.

The Site Manager shall represent the Contractor on the job site and shall be the Purchaser's contact with the Contractor. This manager shall have full authority for the proper execution of the work in this Contract, including all shop and field scope, schedule or cost issues.

All instructions and/or directions given to him by the Purchaser shall be as binding as if given to the Contractor. All communications, documents and contacts between the Contractor and the Purchaser while on site shall be made through the Purchaser. No persons other than the Purchaser's Representative shall be authorized to act as the Purchaser's agent in these matters.

Objection to Representative

- 10.2 The Purchaser shall be entitled by written notice to the Contractor to object to any person employed by the Contractor in the execution of, or otherwise, about the Works who shall, in the opinion of the Purchaser, misconduct him/herself or be incompetent or negligent, and the Contractor shall remove such person from the Works, and replace that person with a competent individual. Replacement supervisory personnel are subject to Purchaser approval.

Fencing, Guarding, Lighting and Watching

- 11.1 Unless otherwise specified, the Contractor shall be responsible for the proper fencing, guarding, lighting and watching of all Works on the Site under its care until accepted by the Purchaser and for the proper provision of temporary roadways, footways, guards and fences as far as may be necessary for the Works under its care and for the accommodation and protection of the owners and occupiers of adjacent property, the public and others. The Contractor shall not use any naked light on the Site without the specific consent of the Purchaser.

Site Services

- 11.2 The Contractor shall provide any apparatus necessary for the use of such supplies of electricity, water, air and other services as are made available for the Contractor's use by the Purchaser under Clause 6.3 (Utilities and Power). Absent agreement otherwise, the Contractor shall pay the Purchaser for such use at such reasonable rates as the Purchaser shall determine.

Clearance of Site

- 11.3 From time to time during the progress of the Works, the Contractor shall clear away and remove from the Site all surplus materials and rubbish and, upon completion, all Contractor's Equipment. The Contractor shall at all times leave the Site and the Works clean and in a safe and workmanlike condition to the Purchaser's reasonable satisfaction.

Cooperation

- 12.1 The Contractor acknowledges the necessity of work to be performed by others, including the Owner and Purchaser, during the execution of the work under this Contract. The Contractor agrees to perform its work under the conditions encountered in full cooperation with the work performed by others, including the Owner and Purchaser and to permit, without charge, access to and use of its work, partially or entirely completed, by said others when, in the judgment of the Purchaser, such access or use is necessary for the performance and completion of any portion of the work of others on the job site.

Wherever any work being done by the Owner or Purchaser's forces, other trades and/or other Contractors or their Subcontractors is contiguous, or required to be performed in advance of, or subsequent to, the work of the Contractor or of its Subcontractors, the Contractor shall comply with the priorities and order of procedure of the several interests involved, as established by the Purchaser, to secure the early completion of the various portions of the work in general harmony and for the best interests of the work as a whole.

It is not incumbent upon the Purchaser to notify the Contractor when to begin, to cease or to resume work on individual operations. However, if, in the Purchaser's judgment, the coordination of the work of the Contractor with that of the others engaged in work on the job site is best served by a cessation of individual operations of the Contractor in any one area and/or the execution of its operations in another area, the Contractor shall, when directed by the Purchaser, regardless of the normal sequence of its own operations, effect such cessation and/or execution without additional cost to the Purchaser.

Where the work of this Contractor is to be installed in, fitted to, attached to, or in any manner integrated with the work of another contractor, this Contractor shall so advise such other contractor in sufficient time to permit the installation, fitting, attachment or integration of said work in an orderly manner, and shall furnish such other contractor with all drawings, details and other instructions required to make proper provisions to receive said work. This Contractor shall schedule and perform its own work to effect such correlation without delay. Where the work of another contractor is to be installed in, fitted to, attached to, or in any manner integrated with the work of this Contractor, this Contractor shall make all provisions in his work necessary to receive same.

Should this Contractor fail to properly inform or advise the other contractor, fail to furnish the other contractor with drawings or other information required, fail to schedule and perform his work in sufficient time to effect the required correlation, or fail to make the necessary provisions to receive the work of another contractor after receipt of due and early notification and of drawings and other necessary information from said contractor, then the cost of all cutting, patching and altering work already in place in order to receive the work to be installed therein, fitted or attached thereto, or integrated therewith, shall be borne by this Contractor at no additional cost to the Purchaser.

If this Contractor furnishes material or Plant to be installed by another contractor, it shall notify such contractor concerning delivery and, unless otherwise directed, shall deliver such material or Plant to the on-site warehouse or storeroom of the contractor who is to install same. All such material or Plant shall be properly marked to indicate the intended location and use. The

contractor delivering the material or Plant shall obtain the recipient's signature and the name of the company it is employed by on the shipping bill.

Hours of Work

- 12.2 The Purchaser may direct that work shall be done at other times if it shall be practicable in the circumstances for work to be so done. Such work shall be done when it has become necessary to ensure the completion of the Works within the Time for Completion.

Shipping and Delivery

- 13.1 The Contractor shall apply in writing to the Purchaser for permission to deliver any Plant or Contractor Equipment to the Site. No Plant or Contractor Equipment may be delivered to the site without the Purchaser's written permission.

It shall be the responsibility of the Contractor to pack for shipping, load and ship all materials and equipment which it is supplying to the project, and it shall also be the responsibility of the Contractor to receive, sign off on all packing slips, handle, unload, uncrate, dispose of crating and shipping materials, deliver within the jobsite, store, and protect all materials and equipment which is supplied by either the Purchaser (or others) or the Contractor.

The Purchaser will not, under any circumstances, receive or unload the Contractor's material and equipment. Under no circumstances is the Contractor to assume that the Purchaser's cranes, lift trucks, or other equipment will be available for its use.

All materials and Plant shipped from the Contractor's shop(s) and purchased equipment shipped to the job site from a manufacturer's source shall be properly marked and identified to enable the Contractor to expedite receipt and handling of same and avoid confusion with others' shipments.

All material shipped by the Contractor or its suppliers to the job site shall be consigned to the Contractor and are to be unloaded as described above. Any material shipped in violation of this section will be refused entrance.

All deliveries to the job site must meet the Owner's security requirements, must be during acceptable delivery time periods and must be met at the security gate by a Contractor's representative and escorted to the unload point. Any demurrage charges involved because of the Contractor's failure to promptly unload materials shall be paid by the Contractor without additional cost to the Purchaser.

Freight on Board (FOB) destination point will be the location of the Works.

Safety

- 14.1 The Contractor shall be responsible for the adequacy, stability and safety of its and any Subcontractor's operations on Site and shall comply with the Purchaser's and Owner's safety regulations applicable at the Site, including those for drug screening, unless specifically authorized by the Purchaser to depart therefrom in any particular circumstance.

Material Safety Data Sheets

- 14.2 Contractor is responsible for maintaining a Material Safety Data Sheet (MSDS) file for all chemicals and materials to be used on site. There will be random inspections of the chemicals and MSDS file by the Owner. Any materials that will be brought on site must have an MSDS submitted to the plant prior to arriving.

Setting Out

- 15.1 The Contractor shall accurately set out the Works in relation to original points, lines and levels of reference given by the Purchaser in writing and provide all necessary instruments, appliances and labor therefore.

If, at any time during the execution of the Works, any error appears in the positions, levels, dimensions or alignment of the Works, the Contractor shall rectify the error.

The Contractor shall indemnify, protect and preserve bench marks, sight rails, pegs and other things used in setting out the Works.

Contractor's Equipment

- 16.1 The Contractor shall, within 30 days of award of Contract, provide to the Purchaser a list of the Contractor's Equipment that the Contractor expects to use on the Site.

Contractor's Equipment on Site

- 16.2 All Contractor's Equipment shall, when brought on to the Site, be deemed to be exclusively intended for the execution of the Works. Said Equipment shall be removed when no longer required for the execution of the Works on Site.

Maintenance of Contractor's Equipment

- 16.3 The Contractor shall be responsible for maintaining Contractor's Equipment on Site in safe working order.

Loss or Damage to Contractor's Equipment

- 16.4 The Contractor shall be liable for the loss of or damage to, any of the Contractor's Equipment which may occur, other than through the fault of the Purchaser or those for whom it is responsible.

Schedule

Purpose of Schedule

- 17.1 The Contractor shall provide information required for development of a Schedule in accordance with the requirements of this Clause. The purpose of the Schedule shall be to:
- 17.1.1 Assure adequate planning, scheduling and reporting during the execution of the Works by the Contractor;
 - 17.1.2 Assure coordination of the Works of the Contractor and the work of the Purchaser and other contractors;
 - 17.1.3 Assist the Purchaser and Contractor in monitoring the progress of the Works and evaluating proposed changes to the Works and the Schedule; and
 - 17.1.4 Assist in the coordination of installation work by Contractor and others so as to complete the Works within the Time for Completion.

Schedule Software

- 17.2 The Contractor shall use Microsoft Project scheduling software in the development and submittal of all Schedules. Alternative software may be used only upon written approval of the Purchaser.

Schedule Requirements

- 17.3 Within two (2) weeks after the award of a Contract, the Contractor shall submit, for acceptance by the Purchaser, a Schedule for execution of the Works that shall provide - in greater detail than the bar chart submitted by the Contractor with its Proposal and in accordance with Purchaser's comments (if any) thereon - at a minimum the following:

17.3.1 The sequencing and timing of the activities by which the Contractor proposes to carry out the Works – including activities for engineering, procurement (submittal, review and approval and fabrication and delivery), installation/erection, testing (tryout and debug), commissioning (including turnover of operating and maintenance instructions) and system fill;

17.3.2 Durations for each individual activity in whole days, with no activity (except those activities relating to fabrication and delivery of Plant) exceeding a duration of seven (7) days; including:

17.3.2.1 Activities and dates for Purchaser-furnished Plant and equipment; and

17.3.2.2 Purchaser-imposed contractual Milestones; and

17.3.2.3 Contractor-developed Milestones to enable Purchaser to track progress of major work components by location or units of measurement; and

17.3.2.4 Identification of those activities on the critical path.

The Schedule as developed shall show the sequence of activities required for complete performance of the Works. The Contractor shall be responsible for assuring all work sequences are logical and the Schedule shows a coordinated plan of the Works. Failure of the Contractor to include any element of the work required for performance of the Works shall not excuse the Contractor from completing the Works within the Time for Completion and/or any Schedule Milestone.

Duration Estimates

- 17.4 Proposed durations assigned to each activity shall be the Contractor's best estimate of time required to complete the activity considering the scope and resources planned for each activity.

Seasonal Weather Conditions

- 17.5 Seasonal weather conditions shall be considered and included in the planning and scheduling of all work influenced by high or low ambient temperatures, wind and/or precipitation to ensure completion of the Works within the Time for Completion.

Manpower Loading

- 17.6 At the time of submittal of the Schedule after award, the Contractor shall submit a manpower resource loading chart (by craft) indicating the total number of workers plus supervision/management (identified separately) for each week of the period covered by the Time for Completion.

Purchaser Comments and Questions

- 17.7 If the Purchaser questions the Contractor's proposed activities, sequence, durations or resource loading, the Contractor shall, within seven (7) days of receipt of the Purchaser's request, provide a revision to, or adequate justification for, these activities, sequencing, durations or resource loading to the satisfaction of the Purchaser.

Acceptance of the Schedule

- 17.8 The Purchaser has the right to reject the Contractor's Schedule if, in the Purchaser's opinion, the Contractor has unreasonably failed to revise the Schedule as requested. Acceptance of the Schedule by the Purchaser is a condition precedent to the making of any progress payments under the Contract after the first forty-five (45) days of the Contract. The Purchaser's review of the Schedule is for compliance with this Clause and other contract requirements. Acceptance by the Purchaser of the Schedule does not relieve the Contractor of any of its responsibility whatsoever for the accuracy or feasibility of the Schedule, or of the Contractor's ability to meet the Time for Completion, nor does such acceptance expressly or impliedly warrant, acknowledge or admit the reasonableness of the activities, sequencing, durations or resource loading of the Contractor's Schedule.

Schedule Updating

- 17.9 The Schedule shall be updated on a weekly basis throughout the entire Time for Completion and until Final Acceptance by the Purchaser. The Update shall reflect:
- 17.9.1 A list of all activities completed during the preceding week;
 - 17.9.2 A list of all activities started but not completed during the preceding week, including percent complete;
 - 17.9.3 Identification of any new or revised activities due to approved Change Orders or Schedule Revisions;
 - 17.9.4 A narrative detailing problems affecting or that could affect schedule progress that need to be brought to the Purchaser's attention;
 - 17.9.5 A listing of critical path activities; and
 - 17.9.6 Manpower projections for remaining work by craft indicating the total number of workers plus supervision/management (identified separately) for each remaining week up to the Time for Completion.

Schedule Revisions

- 17.10 If, as a result of the weekly Schedule Update, it appears the Schedule no longer represents the actual prosecution of the Works, the Purchaser may request, and the Contractor shall submit, a revision to the Schedule within seven (7) days of the request. Purchaser acceptance of any revision is subject to impacts of the Contractor's proposed revisions to ongoing operations or installation work by others. In conjunction with the Schedule revision, the Contractor shall revise its manpower loading accordingly and submit same to Purchaser. The Contractor shall not be entitled to any additional payments for its Schedule revision efforts.

If, in the Purchaser's opinion, the Contractor's rate of progress is such that it does not appear that the Time for Completion will be achieved and that it is not due to a circumstance under which the Contractor is entitled to an extension of time under Clause 20.2 (Time Extension Requirements),

the Contractor shall take such steps as may be necessary to remedy or mitigate the delay, including revision of the Schedule and its manpower loading. The Contractor shall not be entitled to any additional payment for taking such steps.

Responsibility for Completion

- 17.11 The Contractor shall furnish sufficient forces, offices, facilities and equipment, and shall work such hours including shift work and overtime operations as necessary to ensure the prosecution of the Works in accordance with the current Schedule update. Failure of the Contractor to comply with the requirements of this Clause shall be a basis for determination by the Purchaser that the Contractor is not executing the Works in accordance with the Contract, is failing to proceed with the Works with due diligence or is neglecting to carry out its obligations under the Contract as will ensure completion by the Time for Completion, and may proceed under Clause 32 (Contractor's Default).

Daily Progress and Manpower Reports

Report Content and Submittal Requirements

- 18.1 It shall be the responsibility of the Contractor to prepare a daily progress and manpower report (form to be provided by Purchaser) during performance of the Works. The report shall be in the manner prescribed by the Purchaser, and shall include:
- 18.1.1 Name of the Contractor and any Subcontractors;
 - 18.1.2 Crafts/trades employed and number and names of workers by craft/trade;
 - 18.1.3 Number of hours worked per employee, identifying regular and overtime hours;
 - 18.1.4 Identification of shifts worked by worker;
 - 18.1.5 Identification of Contractor's major Equipment on Site; and
 - 18.1.6 A brief description of what is being worked on, identifying the specific schedule activity(ies) being worked.

The Contractor shall provide the Purchaser with a copy of the past week's Daily Progress and Manpower Reports during the weekly project coordination meeting.

Changes

Purchaser's Right to Make Changes

- 19.1 The Purchaser shall have the power, upon providing notice to the Contractor during the execution of the Contract, to instruct the Contractor to make any change to the Works. All proposed changes in the scope of work after award shall be directed in writing to the Contractor by the Purchaser. The Contractor shall not proceed with any changes and shall not be entitled to payment until written authorization to proceed has been obtained from the Purchaser. A change order may result from a Field Work Authorization (FWA) or a Request for Change (RFC).

The Contractor shall carry out such changes and be bound by these Conditions in so doing as though the changes were stated in the original Scope of Work.

Initiation of a Change

- 19.2 The RFC may be initiated by either Contractor or Purchaser. The Contractor shall include a price and schedule in the RFC. An RFC is not valid until final negotiated amount for price is approved with signature by Purchaser.

Any work performed other than that specified by the Contract must be preceded by documentation in the form of a bulletin or otherwise, delineating the exact scope of work and a properly executed FWA or formal Change Order (CO) authorizing the work to proceed. If this work is performed without written authorization, the Purchaser will not be liable for any additional fee or charge by the Contractor at a later date.

The Contractor shall not accept or begin any work outside the original scope until it receives an approved FWA or CO signed by the Purchaser.

If an RFC is initiated by the Purchaser, the Contractor's Representative shall sign two (2) copies and indicate the time and date they were received. The Contractor shall retain one (1) copy for his records and give the other copy to the Purchaser.

If an RFC is initiated by the Contractor, the Purchaser's Representative shall sign two (2) copies and indicate the time and date they were received. The Purchaser shall retain one (1) copy for his records and give the other copy to the Contractor.

The Contractor will be issued a CO authorizing it to proceed with the work after a final negotiation for price and schedule is agreed upon.

Valuation of Change

- 19.3 The Contractor shall provide a price in accordance with these Conditions using price breakdown categories from the Proposal Forms, where applicable, for all work under the RFC and deliver, via a transmittal, a copy of the RFC price (including, but not be limited to, costs for material, fabrication, shipping, engineering, field installation, controls and field wiring) initialed and dated by an authorized representative of the Contractor's firm, to Purchaser within 3 days. During the base contract period, the Site Manager's time shall not be charged to any extras. The Contractor shall also provide the Purchaser with drawings or sketches indicating the proposed work. Failure of the Contractor to comply with the terms of these Conditions will preclude the Contract Price from being increased.

Contractor's Record of Costs

- 19.4 In any case where the Contractor is instructed to proceed with a FWA, or a change prior to the determination of the value thereof under Clause 19.3 (Valuation of Change), the Contractor shall be compensated on a time and material basis, and shall keep contemporaneous records of all costs associated with the change and of the time expended thereon. Such records shall be provided to the Purchaser on a daily basis.

Impact of Change on Schedule

- 19.5 The Contractor must demonstrate, through the issuance of a time impact analysis in accordance with Clause 22 (Time Impact Analysis), the impact of an approved FWA or CO on any interim Milestone date and the Time for Completion.

Non-Compensable Work

19.6 The omission from the drawings and specifications of any minor details of construction, installation, material or essential specialties shall not relieve the Contractor from installing them complete, and shall not entitle the Contractor to make claims for extras on Plant, material, equipment rental or labor.

Any change that is the result of a patent error or omission that the Contractor did not identify prior to bidding shall not entitle the Contractor to additional compensation or a time extension.

Contractor Acknowledgement

19.7 The Contractor acknowledges that a fully executed CO constitutes full and final settlement for all costs and time associated with the change. Costs for the change include all direct and indirect labor costs related to, and/or occasioned by the change, all related Plant, material and equipment costs, any and all impact costs related to and/or occasioned by the performance of the change and all related taxes, insurance, bonds and profits. All other terms and conditions of the Contract shall remain in full force and effect.

Delay in Completion

Milestone Completion Dates

20.1 This Clause shall be construed in the same manner for both interim and final Milestone dates.

Time Extension Requirements

20.2 If, by reason of any change ordered pursuant to Clause 19 (Changes) or delay under Clause 21 (Force Majeure) or of any act or omission on the part of the Purchaser or by reason of circumstances beyond the reasonable control and without the fault or negligence of the Contractor, the Contractor shall have been delayed in the completion of the Works, then provided that the Contractor shall, within seven (7) days, give to the Purchaser written notice of its claim for an extension of time and, within seven (7) days from notice, include a time impact analysis in accordance with Clause 22 (Time Impact Analysis), demonstrating the effect of the impact event on the completion of the Works, the Purchaser shall, on receipt of timely notice and time impact analysis, grant the Contractor, in writing, either prospectively or retrospectively, such extension of the Time for Completion as may be warranted.

Subcontractor Delay

20.3 Any delay on the part of a Subcontractor that prevents the Contractor from completing the Works within the Time for Completion shall entitle the Contractor to an extension, provided such delay is due to a cause for which the Contractor would have been entitled to an extension of time under Clause 20.2 (Time Extension Requirements).

Contractor Duty to Mitigate

20.4 The Contractor is obliged to mitigate delay from whatever cause, and the Contractor shall consult with the Purchaser as needed to determine the steps (if any) which can be taken to overcome or minimize the actual or anticipated delay so as not to interfere with or impact the work of Purchaser or others. The Contractor shall thereafter comply with all reasonable instructions which the Purchaser shall give in order to overcome or minimize such delay.

Liquidated Damages

20.5 All time limits stated in the Contract are of the essence of this Contract. The failure of the Contractor to complete the Works, or any Section thereof, in conformance with the Contract shall result in damages suffered by the Purchaser due to delays in completion of the Works. The amount of such damages are, at the time of execution of the Contract, and at the time of any delayed performance by the Contractor, difficult to quantify with any reasonable accuracy. The Purchaser has forecast a reasonable daily amount, as stated in the Special Conditions, as compensation for the damages incurred due to late completion caused by the Contractor.

If the Contractor fails to substantially complete the Works, or any Section thereof, in conformance with the Contract or within such time extension as may have been granted under Clause 20.2 (Time Extension Requirements), then the Contractor shall pay the Purchaser, for each and every day that the Works, or Section thereof, remains uncompleted, a percentage of the Contract Value, as stated in the Special Conditions, as liquidated damages for each day of delay beyond the Time for Completion.

The amount of liquidated damages provided in this Contract is neither a penalty nor a forfeiture. The liquidated damage rates are an attempt to compensate the Purchaser for the value of loss associated with the inability to utilize the Contractor's work for its intended purpose.

If the Contractor fails to substantially complete the Works, or Section thereof, in conformance with the Contract and the Purchaser nevertheless permits the Contractor to continue performance of the work, such permission shall neither modify nor waive the Purchaser's right to assess and collect, and the Contractor's obligation to pay, liquidated damages.

In the event the Purchaser terminates the Contractor, the resulting damage for any delay in completion of the Works, or a Section thereof, will consist of liquidated damages until such reasonable time as may be required for completion of the Works and any increased costs incurred by the Purchaser in completing the Works.

The Purchaser shall recover said liquidated damages by deducting the amount thereof from any monies due or that may become due the Contractor. In the event the remaining balance due the Contractor is insufficient to cover the full amount of assessed liquidated damages, then the Contractor shall pay the amount due and the Purchaser shall be entitled to any and all rights and remedies available to it in law or equity to recover the same.

In addition to liquidated damages, the Purchaser shall be entitled to claim against the Contractor for specific actual costs incurred not specifically included within the liquidated damages as set forth herein. Specifically, said costs relate to the cost (whether out-of-pocket or internal) associated with additional Daifuku personnel time and expense incurred due to the liquidated damage period.

Liquidated damages for Contractor delay are intended to be and are cumulative and shall be in addition to every other remedy now or hereinafter enforceable at law, in equity, by statute, or under the Contract.

Force Majeure

Meaning of Force Majeure

21.1 Force Majeure shall mean any of the following events (provided such events are beyond the reasonable control of the Contractor and are not due to an act or omission of the Contractor) which materially and adversely affect the Contractor from completing the Works within the scheduled time, and which events (or the effects thereof) could not have been avoided by due diligence and use of reasonable efforts by the Contractor:

- 21.1.1 War, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- 21.1.2 Ionizing radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- 21.1.3 Pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds;
- 21.1.4 Rebellion, revolution, insurrection, military or usurped power or civil war;
- 21.1.5 Riot, civil commotion or disorder; and
- 21.1.6 Any legal proceeding seeking to restrain, enjoin, challenge or delay construction of the Works or the granting or renewal of any Government approval.

Notice of Force Majeure

- 21.2 If either party is prevented from or delayed in performing any of its obligations under the Contract by Force Majeure, then it shall, as soon as reasonable possible, notify the other party of the circumstances constituting the Force Majeure and of the performance which is thereby delayed or prevented, and the party giving the notice shall, upon verification of the claimed circumstances in accordance with Clause 20.2 (Time Extension Requirements), be excused from the performance, as the case may be, of such obligation for so long as the delaying circumstances may continue.

Termination Due to Force Majeure

- 21.3 Notwithstanding that the Contractor may have been granted an extension of the Time for Completion of the Works under Clause 20.2 (Time Extension Requirements), if by virtue of Clause 21.2 (Notice of Force Majeure), either party shall be excused from the performance of any obligation for a continuous period of one hundred and twenty (120) days, then either party may at any time thereafter, provided such performance is still excused, by written notice to the other, terminate the Contract.

Payment on Termination Due to Force Majeure

- 21.4 If the Contract is terminated under Clause 21.3 (Termination Due to Force Majeure) the Purchaser shall compensate the Contractor for the reasonable value of the work completed between the Contractor's most current progress payment request and the date of termination. Overhead and profit shall not be allowed, except on the value of work performed, subsequent to the beginning of work cessation caused by Force Majeure.

Time Impact Analysis

Need for Time Impact Analysis

- 22.1 When change orders are initiated, delays are experienced or schedule revisions (as discussed under Clause 17 (Schedule)) are made, the Contractor shall submit to the Purchaser a written Time Impact Analysis illustrating the influence of each change order, delay or schedule revision on the Time for Completion.

Time Impact Analysis Requirements

22.2 The Time Impact Analysis shall reflect how the Contractor proposes to incorporate the event or impact into the Schedule, and using the Schedule Update prior to the occurrence of the impact event, shall demonstrate the effect, if any, on specific activities and the Time for Completion. Information shall include the following:

22.2.1 The activity(ies) affected;

22.2.2 The duration of the impact event;

22.2.3 The labor crafts involved; and

22.2.4 Whether the manpower necessary to accomplish the impact event is new or existing, and if the latter, identification of activities from which the manpower was relocated.

Activity delays shall not automatically mean that an extension of the Time for Completion is warranted or due the Contractor. It is possible that a change order or delay will not affect existing critical activities or cause non-critical activities to become critical. A change order or delay may result in only absorbing part of the available total float that may exist within a string of activities, thereby not causing any effect on the Time for Completion.

Float

22.3 Float is not for the exclusive use or benefit of either the Purchaser or the Contractor. Extension of the Time for Completion may be granted only to the extent the time for the event or impact exceeds available float and extends the Time for Completion.

Hours to be Included in Request for Change

22.4 If the Contractor establishes the right to a time extension, but existing operations or the need to complete the Works by the Time for Completion in order not to delay the work of others or start-up operations does not allow for a time extension, the Contractor, upon the request of Purchaser, shall include additional sufficient hours, involving all necessary premium time and shift work, in the RFC to complete the additional or impacted work within the Time for Completion.

Timely Request

22.5 If the Contractor does not submit a written request for extension of the Time for Completion within fourteen (14) days after occurrence of the event or impact, it is mutually agreed that the particular impact does not require an extension to the Time for Completion.

Invoicing and Payment

Progress Payments

23.1 On no more than a monthly basis, Purchaser shall pay ninety percent (90%) of the total Contract Value in the form of a progress payment for Plant and material delivered to the site and work completed in proportion to the work performed per the schedule of values; or of the progress of the work that is to be agreed in writing with Purchaser prior to award of Contract. Contractor shall provide evidence of Plant and material delivered or progress achieved as requested by the Purchaser.

Progress Payment Requirements

23.2 The following worksheets, based on the Proposal Forms schedule of values, shall be submitted for review on the date specified by the Purchaser each month for:

23.2.1 All materials and equipment delivered to the Site through the previous day of the same month; and

23.2.2 Work completed through the previous day of the same month.

Purchaser will review the worksheets, negotiate any adjustments and return it with approved amounts within three (3) business days. Progress payment worksheets must be in whole percentages of the Contract Price.

Retained Amount

23.3 Purchaser shall retain ten percent (10%) of the total Contract Value from each of the monthly progress payments. The retained amount shall be paid after the expiration of the warranty period, as defined in Clause 29.2 (Defects Liability Period).

Maintenance/Warranty Bond In Exchange for Retained Amount

23.4 If the Contractor wishes to be paid the retained amount prior to the end of the warranty period, it may submit to Purchaser for its consideration a Maintenance/Warranty Bond equal in value to the retained amount. A total waiver of lien, in a form provided by the Purchaser, that acknowledges receipt of full and final payment and waiving all rights to request further compensation from Purchaser, must also be submitted with the Maintenance/Warranty Bond. The Maintenance/Warranty Bond will be released within thirty (30) days after the warranty period expires.

Purchaser has the right to refuse a Maintenance/Warranty Bond if performance by the Contractor is suspect, or if in the Purchaser's discretion, the Contractor's ability to honor the warranty is in doubt. Upon refusal of a request for Maintenance/Warranty Bond, the Purchaser shall hold on to the retained amount until the warranty period has expired.

Invoices

23.5 Each invoice shall reflect the monthly gross sum requested, the retained amount and net monthly sum, the cumulative gross contract value, cumulative retained amount, and cumulative net contract value.

All invoices shall be in U.S. Dollars and accompanied by an original, signed, notarized, waiver of lien from the Contractor and signed, notarized, waivers of lien from all Subcontractors, waiver of lien forms to be provided by Purchaser. All invoices must contain the following certificate in order to be approved for payment:

“We hereby certify that these goods were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and regulations and orders of the United States Department of Labor issued under Section 14 thereof.”

If the project is classified as Non-Taxable for Labor and Materials installed, a copy of the applicable tax exempt letter shall be made available upon request to the Purchaser. State sales tax on consumable items such as work gloves, tools, etc. is not exempt.

The client or 'bill to' name on the invoice is as follows:

DAIFUKU AMERICA CORP.
6700 TUSSING ROAD
REYNOLDSBURG, OHIO 43068

Receipt of Invoice

- 23.6 Invoices based on the approved worksheets, less ten percent (10%) retainer, must be received by Purchaser within two (2) business days after the worksheet was approved. Traceable shipping methods (such as Fed-Ex or UPS) for original invoices are strongly suggested. Purchaser will not accept late invoices.

Invoices shall be sent to:

DAIFUKU AMERICA CORP.
6700 TUSSING ROAD
REYNOLDSBURG, OHIO 43068

Invoices for Changes and Field Work

- 23.7 Invoices for Changes and Field Work Authorizations are to be submitted separate from the base contract work and may be submitted anytime except for a ten (10) day period which begins with the date specified by the Purchaser for submittal of the worksheets of every month, which is reserved for handling base contract invoice issues. Invoice values are to be determined in accordance with Clause 19.3 (Valuation of Change) and Clause 19.4 (Contractor's Record of Costs). Invoices for Changes or Field Work Authorizations shall be submitted within thirty (30) days of performance of the Change or Field Work Authorization. Invoices received after 30 days will not be paid.

Payment

- 23.8 All payments are payable within thirty (30) days after receipt of invoice.

All invoices shall include a bank name, address, routing number, and an account number for which to wire funds. Wire transfer fees shall be borne by the Contractor.

Payment, all or in part, shall not relieve the Contractor from its obligations under the Contract.

Application for Final Payment

- 23.9 Subject to Clause 23.4 (Maintenance/Warranty Bond in Exchange for Retained Amount), the Contractor shall make application for Final Payment forthwith after the Contractor's obligations under Clause 29 (Defects Liability) have ceased and the Contractor has completed any outstanding remedial work thereunder.

The application for Final Payment shall be accompanied by an original, signed, notarized, final waiver of lien from the Contractor and signed, notarized, final waivers of lien from all Subcontractors, final waiver of lien forms to be provided by Purchaser.

Value of Final Payment

- 23.10 A Final Payment shall certify the total amount payable to the Contractor under the Contract with respect to the Works or any Sections thereof having regard to any addition to or deduction from the Contract Price provided for in these Conditions and claims in respect thereof made by the

Contractor or the Purchaser, the total amounts paid on progress payments previously issued, and the balance payable whether by the Purchaser to the Contractor or by the Contractor to the Purchaser.

Issuance of Final Payment

23.11 The Purchaser shall issue to the Contractor Final Payment within sixty (60) days after receiving an application which the Contractor was entitled to make and which complies with all the requirements of Clause 23.9 (Application for Final Payment). For the purposes of this Clause, time shall not start to run until the Contractor has provided to the Purchaser all information that the Purchaser may reasonably require in amplification of the final account.

Effect of Final Payment

23.12 Final Payment shall be conclusive evidence:

23.12.1 That the Works or Section to which such payment relates is in accordance with the Contract;

23.12.2 That the Contractor has performed all its obligations under the Contract in respect thereof; and

23.12.3 Of the value of the Works or Section.

Final Payment shall not be conclusive as to any matter dealt with in the payment in the case of fraud or dishonesty relating to or affecting any such matter.

Final Payment shall not be conclusive if any proceedings arising out of the Contract, whether under Clause 35 (Resolution of Disputes) or otherwise, shall have been commenced prior to the issuance of Final Payment by either party in relation to the Works or Section to which the payment relates.

Nothing in this Clause shall affect the rights of the Purchaser or the obligations of the Contractor.

Inspection and Testing of Plant

Purchaser's Entitlement to Test

24.1 The Purchaser shall be entitled at all reasonable times during manufacture to inspect, examine and test on the Contractor's premises the materials and workmanship and performances of all Plant to be supplied under the Contract. If part of the Plant is being manufactured on other premises, the Contractor shall obtain permission for the Purchaser to inspect, examine and test as if the Plant were being manufactured on the Contractor's premises. Such inspection, examination or testing shall not release the Contractor from any obligation under the Contract.

Dates of Tests and Inspection

24.2 The Contractor shall agree with the Purchaser on the date and the place at which any Plant will be ready for testing or inspection as provided in the Contract. The Purchaser shall give the Contractor notice of its intention to attend the test or inspection. If the Purchaser shall not be able to attend at the place so named on the date agreed, the Contractor may proceed with the test or inspection. The Contractor shall forward to the Purchaser duly certified copies of the results of such test or inspection.

Services for Tests and Inspection

- 24.3 Where the Contract provides for tests or inspection on the premises of the Contractor or of any Subcontractor, the Contractor shall provide free of charge such assistance, labor, materials, electricity, fuel, stores, apparatus and instruments as may be required and as may be reasonably demanded to carry out such test or inspection.

Acceptance Test Forms Submittal

- 24.4 When the Purchaser is satisfied that any Plant has passed the test or inspection referred to in this Clause, the Contractor shall submit a completed Acceptance Test Form to the Purchaser for approval.

Failure of Tests or Inspection

- 24.5 If after inspecting, examining or testing of any Plant, the Purchaser shall determine if such Plant or any part thereof is defective or not in accordance with the Contract, it may reject the said Plant or part by giving written notice to the Contractor, within fourteen (14) days, stating therein the grounds upon which the said decision is based. Following any such rejection, the Contractor shall make good, or otherwise repair or replace, the rejected Plant and resubmit the same for test or inspection in accordance with this Clause. All expenses reasonably incurred by the Purchaser in attending or in consequence of such re-testing or inspection shall be deducted from the Contract Price.

Tests on Installation

Notice of Tests

- 25.1 The Contractor shall give the Purchaser notice of the date upon which it will be ready to make the Tests on Installation. Unless otherwise agreed, the Tests on Installation shall take place on such day or days as the Purchaser shall notify the Contractor.

Time for Tests

- 25.2 If the Purchaser fails to appoint a time after having been asked to do so or to attend the Tests on Installation, the Contractor shall be entitled to proceed in Purchaser's absence. The Contractor shall forward to the Purchaser duly certified copies of the results of the Tests on Installation.

Delayed Tests

- 25.3 If the Tests on Installation are being unduly delayed by the Contractor, the Purchaser may, by written notice, call upon the Contractor to make them. If the Contractor fails to make the Tests on Installation, the Purchaser may proceed therewith at the risk and expense of the Contractor and the Cost thereof shall be deducted from the Contract Price.

Repeat Tests

- 25.4 If any part of the works fails to pass the Tests on Installation, the tests shall be repeated within a reasonable time upon the same terms and conditions. All Costs which the Purchaser may incur in the repetition of the Tests on Installation shall be deducted from the Contract Price. The provisions of this Clause shall also apply to any tests carried out under Clause 29.8 (Further Tests).

Consequences of Failure to Pass Tests on Installation

- 25.5 If the Works or any Section fails to pass the Tests on Installation (including any repetition thereof), the Contractor shall take whatever steps may be necessary to enable the Works or the Section to pass the Tests on Installation and shall thereafter repeat them, unless any time limit specified in the Contract for the passing thereof shall have expired, in which case, the Purchaser shall be entitled to reject the Works or the Section and to proceed in accordance with Clause 32 (Contractor's Default).

Interference with Tests

- 25.6 If by reason of any act or omission of the Purchaser, or some other contractor employed by the Purchaser, the Contractor shall be prevented from carrying out the Tests on Installation in accordance with this Clause 25, then, unless the Works have been proved not to be substantially in accordance with the Contract, the Purchaser shall be deemed to have accepted the Works and the Purchaser shall, upon the application of the Contractor, issue a Final Acceptance Certificate accordingly.

Tests During Defects Liability Period

- 25.7 In any case where a Final Acceptance Certificate has been issued under Clause 25.6 (Interference with Tests), the Contractor shall be under an obligation to carry out the Tests on Completion during the Defects Liability Period as and when required with fourteen (14) days written notice from the Purchaser. Such allowances shall be made from the required results as may be reasonable with regard to any use of the Works by the Purchaser prior to the Tests on Completion and to any deterioration therein which may have occurred since the issue of the Final Acceptance Certificate.

Contractor's Responsibility

- 25.8 It is the Contractor's responsibility to provide a trouble-free system, complete in every respect, including tryout, debug and testing no later than the dates specified. The Contractor shall try out all Plant covered in this Contract after the installation is complete prior to the debug period and shall maintain a crew consisting of all trades involved in the installation required to operate, function, adjust and correct any deficiencies found during the tryout period. The Contractor shall check and adjust all equipment and operations, etc., in order to determine, in the Purchaser's opinion, whether the requirements of the bid documents have been met.

The debug period follows the tryout period and is a prerequisite to the beginning of system fill. The debug period shall consist of all checking, correcting and adjusting described in the tryout period utilizing loaded carriers and/or production parts to simulate job flow.

The tryout and debug periods shall be completed prior to system fill because production jobs cannot be held up to make adjustments and corrections to the equipment. The Contractor shall perform the tryout and debug periods as far in advance as possible to allow for a smooth production startup.

Performance Tests

Time for Performance Tests

- 26.1 Performance Tests shall be carried out as soon as is reasonably practicable and within a reasonable time after the Works, or the Section of the Works, to which such tests relate, have been accepted by the Purchaser. Commissioning and system fill follows the debug period and is required for

Final Acceptance. During this period, the plant production personnel will begin to fill all systems to their full capacity.

Procedures for Performance Tests

- 26.2 Performance Tests shall be carried out by the Purchaser on its behalf under the supervision of the Contractor and in accordance with the procedures and operating conditions specified in the Contract and in accordance with such other instructions as the Contractor may give in the course of carrying out such tests.

Cessation of Performance Tests

- 26.3 The Purchaser or the Contractor shall be entitled to order the cessation of any Performance Test if damage to the Works or personal injury are likely to result from continuation.

Adjustments and Modifications

- 26.4 If the Works, or any Section thereof, fails to pass any Performance Test (or repetition thereof) or if any Performance Test is stopped before its completion, such test shall, subject to Clause 26.5 (Postponement of Adjustments and Modifications), be repeated as soon as practicable thereafter. The Purchaser shall permit the Contractor to make adjustments and modifications to any part of the Works before the repetition of any Performance Test and shall, if required by the Contractor, shut down any part of the Works for such purpose and restart it after the adjustments and modifications have been made. The Contractor shall, if so required by the Purchaser, submit to the Purchaser for its approval details of the adjustments and modifications which the Contractor proposes to make.

Postponement of Adjustments and Modifications

- 26.5 If the Works, or any Section thereof, fails to pass any Performance Test (or repetition thereof) and the Contractor in response proposes to make any adjustments or modifications thereto, the Purchaser may notify the Contractor that it requires the performance of such adjustments or modifications to be postponed. In such event the Contractor shall remain liable to carry out the adjustments or modifications within a reasonable time of being notified to do so by the Purchaser.

Time for Completion of Performance Tests

- 26.6 If the Contract provides that the Performance Tests (or repetition thereof) shall be completed within a specified time, the Purchaser shall be entitled to use the Works as it thinks fit from the expiration of such time.

Performance Requirements

- 26.7 The specific system requirements regarding uptime, maximum throughput and the time within which to meet these requirements are identified in the Special Conditions.

Final Acceptance

Final Acceptance Certificate

- 27.1 When the Works have passed the Tests on Installation and are complete (except in minor respects that do not affect their use for the purpose for which they are intended), the Contractor shall issue the duly certified copies of the results of the Test on Installation and a Certificate to the Purchaser (herein called a Final Acceptance Certificate'). The Purchaser shall in the Certificate certify the date upon which the Works passed the Tests on Installation and were so complete.

The Purchaser shall be deemed to have accepted the Works on the date so certified.

Certification Requirements

- 27.2 Prior to the issuance of a Final Acceptance Certificate, the Contractor shall conduct a final inspection to insure that all material, equipment and piping installed by it has been cleaned and placed in complete and satisfactory working order. The Contractor shall also insure that all surplus materials and debris caused by its work has been removed from the premises and the job site left in a presentable state subject to the Purchaser's approval.

After the Contractor has completed its final inspection, the Contractor and the Purchaser will survey the installation to determine, in the Purchaser's opinion, if all parts of the installation are complete. All incomplete or improperly operating items not of a minor nature shall be completed or corrected by the Contractor prior to the issuance of a Final Acceptance Certificate. The inspection process will be repeated until all items meet the Purchaser's approval. At that point, attention will be directed to the punch list created by the Purchaser.

The Contractor shall rectify or complete to the reasonable satisfaction of the Purchaser, within the time stated in the Final Acceptance Certificate, punchlist items of work or Plant noted as requiring adjustment or as incomplete. In the event the Contractor fails to do so, the Purchaser may arrange for the outstanding work to be done and the Cost thereof shall be deducted from the Contract Price.

Effect of Final Acceptance Certificate

- 27.3 Upon the issuance of a Final Acceptance Certificate, risk of loss or damage to the Works (other than any parts thereof excluded by the terms of the Final Acceptance Certificate) shall pass to the Purchaser and it shall take possession thereof.

Final Acceptance by Section

- 27.4 If the Contract provides for the Works to be accepted by Sections, the provisions of this Clause shall apply to each such Section as applies to the Works.

Use Before Final Acceptance

- 27.5 If, by reason of any delay or default on the part of the Contractor, a Final Acceptance Certificate has not been issued in respect of the whole of the Works within one (1) month after the Time for Completion, the Purchaser shall be entitled to use any Section or part of the Works in respect of which a Final Acceptance Certificate has not been issued, provided the same is reasonably capable of being used. The Contractor shall be afforded the earliest possible opportunity of taking such steps as may be necessary to permit the issuance of the Final Acceptance Certificate. The provisions of Clause 30.1 (Care of the Works) shall not apply to any Section or part of the Works while being so used by the Purchaser and Clause 29 (Defects Liability) shall apply thereto as if a Final Acceptance Certificate had been issued from the date the Section or part was taken into use.

Vesting of Plant and Contractor's Equipment

Ownership of Plant

28.1 Plant to be supplied pursuant to the Contract shall become the property of the Purchaser at whichever is the earlier of the following times:

28.1.1 When Plant is delivered pursuant to the Contract; or

28.1.2 When the Contractor becomes entitled to have the Contract Value of the Plant in question included in a progress payment.

Marking of Plant

28.2 Where, prior to delivery to the Site, ownership of any Plant has passed to the Purchaser, the Contractor shall, so far as is practicable, set the Plant aside and mark it as the Purchaser's property in a manner reasonably required by the Purchaser.

Until the Plant has been so set aside and marked, the Purchaser shall be entitled to withhold any progress payment for said Plant to which the Contractor might otherwise be entitled.

The Contractor shall permit the Purchaser at any time upon reasonable notice to inspect any Plant which has become the property of the Purchaser and shall grant the Purchaser or procure the grant of access to the Contractor's premises for such purposes or any other premises where such Plant may be located.

All such Plant shall be in the care and possession of the Contractor solely for the purposes of the Contract and shall not be within the ownership or disposition of the Contractor.

No progress payment issued by the Purchaser shall prejudice its right to reject Plant which is not in accordance with the Contract. Upon any such rejection, the property in the rejected Plant shall immediately revert to the Contractor.

Defects Liability

Defects Before Final Acceptance

29.1 If, with respect to any part of the Works not yet accepted, the Purchaser shall at any time:

29.1.1 Decide that any work done or Plant supplied or material used by the Contractor or any Subcontractor is defective or not in accordance with the Contract, (all such matters being hereinafter in this Clause called 'defects'); and

29.1.2 As soon as reasonably practicable, notify the Contractor of said decision, specifying particulars of the defects alleged and of where the same are alleged to exist or to have occurred; and

29.1.3 The Contractor shall with all speed and at its own expense, make good the defects so specified in accordance with the requirements of Clause 29.3 (Correcting Defects).

29.1.4 The Contractor understands and acknowledges that defects may affect Owner production levels, and as such, is responsible for devising and maintaining temporary measures to its system in order to meet owner production levels, commencing at system fill, until such time that an acceptable remedy is developed. The Contractor additionally recognizes that maintaining Owner production levels shall be a priority, and Contractor repairs may not

be capable of being accomplished until there are stoppages in production that will permit safe and reasonable access without affecting production levels.

Defects Liability Period

29.2 In these Conditions the expression 'Defects Liability Period' means the warranty period for which all installations and component parts are to be guaranteed. The Defects Liability Period, unless stated otherwise in the Special Conditions, shall be twelve (12) months from the actual start of production as defined in the Milestone Schedule or twelve (12) months calculated from the date of Final Acceptance of the Works under Clause 27 (Final Acceptance), whichever is later. Where any Section of the Works is accepted separately, the Defects Liability Period shall apply to each such Section as applies to the Works.

Correcting Defects

29.3 The Contractor shall be responsible for correcting, by repair or replacement, with all possible speed and at its expense, any defect in or damage to any part of the Works which may appear or occur and which arises either:

29.3.1 From any defective materials, workmanship or design; or

29.3.2 From any act or omission of the Contractor.

Notice of Defects

29.4 If any such defect shall appear or damage occur, the Purchaser shall, as soon as reasonably possible, inform the Contractor thereof stating, in writing, the nature of the defect or damage.

Extension of Defects Liability

29.5 The Defects Liability Period shall be extended by a period equal to the period during which the Works (or that part thereof in which the defect or damage to which this Clause applies has appeared or occurred) cannot be used by reason of that defect or damage.

Delay in Remedying Defects

29.6 If any such defect or damage be not remedied within a reasonable time, the Purchaser may proceed to do the work at the Contractor's risk and expense provided that it does so in a reasonable manner and notifies the Contractor of its intention to do so. The Costs reasonably incurred by the Purchaser shall be deducted from the Contract Price or be paid by the Contractor to the Purchaser.

Removal of Defective Work

29.7 The Contractor may, with the consent of the Purchaser, remove from the Site any part of the Works which is defective or damaged, if the nature of the defect or damage is such that repairs cannot be expeditiously carried out on the Site.

Further Tests

29.8 If the repairs or replacements are of such a character as may affect the operation of the Works or any part thereof, the Purchaser may, within one month after such repair or replacement, give to the Contractor notice requiring that further Tests on Installation or Performance Tests be made, in which case, such Tests shall be carried out as provided in Clause 25 (Tests on Installation) or Clause 26 (Performance Tests) as the case may be.

Contractor to Search

- 29.9 The Contractor shall, if required by the Purchaser in writing, search for the cause of any defect, under the direction of the Purchaser. Unless such defect shall be one which the Contractor would otherwise be responsible for making good under Clause 29.3 (Correcting Defects), the Cost of the work carried out by the Contractor in searching as aforesaid shall be borne by the Purchaser and added to the Contract Price.

Accidents and Damage

Care of the Works

- 30.1 The Contractor shall be responsible for the care of the Works or any Section thereof until the date of Final Acceptance as stated in the Final Acceptance Certificate applicable thereto. The Contractor shall also be responsible for the care of any outstanding work which the Contractor or its Subcontractors have undertaken to carry out during the Defects Liability Period until all such outstanding work is complete.

Making Good on Loss or Damage to the Works

- 30.2 In the event that any part of the Works shall suffer loss or damage whilst the Contractor has responsibility for the care thereof, the same shall be made good by the Contractor at its own expense. The Contractor shall also at its own expense make good any loss or damage to the Works occasioned by it in the course of operations carried out by it for the purpose of completing any outstanding work or of complying with its obligations under Clause 29 (Defects Liability).

Injury to Persons and Property While the Contractor has Responsibility for Care of the Works

- 30.3 Except as hereinafter mentioned, the Contractor shall be liable for and shall indemnify the Purchaser against all claims in respect of personal injury or death and in respect of loss of or damage to any property which arises out of or in consequence of the execution of the Works while the Contractor has responsibility for the care thereof and against all demands, cost, charges, and expenses arising in connection therewith.

Injury to Persons and Damage after Responsibility for Care of the Works Passes to Purchaser

- 30.4 If there shall occur any death or injury to any person or loss of or damage to any property (other than the Works) after the responsibility for the care of the Works shall have passed to the Purchaser, the Contractor shall be liable for and shall indemnify the Purchaser against all such claims and all actions, demands, costs, charges and expenses arising in connection therewith to the extent that such death or personal injury or loss of or damage to property was caused by the negligence or breach of statutory duty of the Contractor, his Subcontractors, servants or agents or by defective design, materials or workmanship but not otherwise. The Contractor's liability for any loss or damage to the Works shall be limited to the fulfillment of its obligations in relation thereto under Clause 29 (Defects Liability).

Accidents or Injury to Workers

- 30.5 The Contractor shall indemnify the Purchaser against all actions, suits, claims, demands, costs, charges and expenses arising in connection with the death of or injury to any person employed by the Contractor or its Subcontractors for the purposes of the Works.

Claims with Respect to Damage to Persons or Property

- 30.6 In the event of any claim being made against the Purchaser arising out of the matters referred to and in respect of which it appears that the Contractor may be liable under this Clause, the Contractor shall be promptly notified thereof and may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise in relation thereto. The Purchaser shall not, unless and until the Contractor shall have failed to take over the conduct of the negotiations or litigation, make any admission which might be prejudicial thereto. The conduct by the Contractor of such negotiations or litigation shall be conditional upon the Contractor having first given to the Purchaser such reasonable security as shall from time to time be required by it to cover the amount ascertained or agreed or estimated, as the case may be, of any compensation, damages, expenses and costs for which the Purchaser may become liable. The Purchaser shall, at the request of the Contractor, afford all available assistance for any such purpose and shall be repaid all Costs reasonably incurred in so doing.

Suspension of Works, Delivery or Assembly

Instructions to Suspend

- 31.1 The Purchaser may at any time instruct the Contractor to suspend the progress of the Works. The Contractor shall, during the suspension, store, preserve, protect and otherwise secure the Works and/or Plant affected and insure the same to the extent required by the Purchaser.

Disallowance of Additional Cost or Payment

- 31.2 The Contractor shall not be entitled to any additional Costs if suspension is necessary by reason of default on the part of the Contractor or for the proper execution for the safety of the Works or Plant, save where such necessity results from any act or default of the Purchaser. Under no circumstances shall the Contractor be entitled to profit on its additional Costs caused by a suspension.

Resumption of Work, Delivery or Erection

- 31.3 Upon written notification by the Purchaser for the Contractor to proceed with the delivery or erection of Plant and/or work that is the subject of suspension under this Clause, the Contractor shall immediately resume work.

Contractor's Default

Grounds for Default

- 32.1 The Purchaser may terminate this Contract under the following situations:
- 32.1.1 The Contractor assigns the Contract or sub-lets the whole of the Works without the consent of the Purchaser;
 - 32.1.2 The Purchaser has rejected the Works or a Section under Clause 25.5 (Consequences of Failure to Pass Tests on Completion);
 - 32.1.3 The Contractor has abandoned the Contract;
 - 32.1.4 The Contractor has, without reasonable excuse, suspended the progress of the Works for thirty (30) days after receiving written notice from the Purchaser to proceed;

- 32.1.5 The Contractor becomes bankrupt or otherwise insolvent; or
- 32.1.6 Despite previous warnings in writing from the Purchaser, the Contractor is not executing the Works in accordance with the Contract, or is failing to proceed with the works with due diligence or is neglecting to carry out its obligations under the Contract so as to adversely affect the carrying out of the Works.

Default Process

- 32.2 The Purchaser shall give seven (7) days written notice to the Contractor of its intention to proceed in accordance with the provisions of this Clause. Upon the expiration of such notice, the Purchaser may, without prejudice to any other remedy under the Contract, terminate the Contract and enter the Site and expel the Contractor therefrom without releasing the Contractor from any of its obligations or liabilities which have accrued under the Contract and without affecting the rights and powers conferred by the Contract on the Purchaser. Upon such termination, the Purchaser may complete the Works itself or may employ any other contractor to do so, and the Purchaser shall have the free use of any of Contractor's Equipment on the Site.

Valuation at Date of Termination

- 32.3 As soon as practicable after the Contract has been terminated, the Purchaser shall, after making such enquiries as it thinks fit, value the Works and all sums then due to the Contractor as of the date of termination in accordance with the principles of Clause 23 (Invoicing and Payment) and certify the amount thereof. The amount so certified is herein called 'The Termination Value'.

Payment After Termination

- 32.4 The Purchaser shall not be liable to make any further payment to the Contractor until the Costs of execution and all other expenses incurred by the Purchaser in completing the Works have been ascertained (herein called 'the Cost of Completion'). If the Cost of Completion when added to the total amounts already paid to the Contractor, as of the date of termination, exceeds the total amount which the Purchaser would have paid the Contractor for the execution of the Works, the Purchaser shall identify such excess and the Contractor shall pay to the Purchaser the amount of such excess. Any such excess shall be deemed a debt due by the Contractor to the Purchaser and shall be recoverable accordingly. If there is no such excess, the Contractor shall be entitled to be paid the difference (if any) between the Termination Value and the total of all payments received by the Contractor as of the date of termination.

Purchaser's Default

Notice of Termination Due to Purchaser's Default

- 33.1 In the event of the Purchaser failing to pay the Contractor the amount due under any invoice in a reasonable time after the date of its receipt, subject to any deduction that the Purchaser is entitled to make under the Contract or re-submission required by the Contractor due to its failure to comply with the invoicing requirements under the Contract, the Contractor shall notify the Purchaser in writing of its intent to terminate the Contract should payment not be forthcoming within thirty (30) days for rightfully owed and fully compliant invoices.

Removal of Contractor's Equipment

- 33.2 Should the thirty (30) day period expire without proper payment by the Purchaser, the Contractor shall, with all reasonable dispatch, remove from the Site all Contractor's Equipment.

Payment on Termination Due to Purchaser's Default

- 33.3 In the event of termination under Clause 33.1 (Notice of Termination due to Purchaser's Default), the Purchaser shall act as provided in Clause 32.3 (Valuation at Date of Termination) and determine the Termination Value of the Works as of the date of termination. The Purchaser shall, on the application of the Contractor accompanied by supporting details, also determine the amount of any expenditure reasonably and properly incurred by the Contractor as a consequence of the termination of the Contract to the extent that the same has not been included in the Termination Value; but in no case shall the total amounts exceed the Contract Price. Upon submission of all adequate proofs of costs incurred, the Purchaser shall issue payment for the amount by which the said Termination Value and expenditure exceeds the total of sums previously paid to the Contractor.

Claims

Notification of Claims

- 34.1 In every case where, by virtue of these Conditions, circumstances arise for which the Contractor seeks additional time and/or cost regarding disputes or matters in question that are not addressed elsewhere in these Conditions, the following shall apply:
- 34.1.1 Within seven (7) days of the said circumstance(s) arising, the Contractor shall, if it intends to make any claim for additional time or cost, provide written notice to the Purchaser of its intention to make a claim and shall state the reasons by virtue of which it considers that it is entitled thereto; and
- 34.1.2 Within seven (7) days from the date of the notice given by the Contractor of its intention to make a claim for additional time and/or cost, the Contractor shall submit to the Purchaser full particulars of and the actual amount of its claim, including all alleged additional costs arising from the claim event and requested time extension in accordance with Clause 22 (Time Impact Analysis). The Contractor shall thereafter promptly submit such further particulars as the Purchaser may reasonably require to assess the value of the claim.

Purchaser's Liability to Pay Claims

- 34.2 Notwithstanding anything contained in these Conditions, the Contractor shall not be entitled to a time extension and/or cost adjustment in respect of any claim unless the Contractor has complied with the requirements of this Clause. Failure by the Contractor to submit, within the stated time period, time and cost data to support its position shall render its claim void.

Resolution of Disputes

Disputes and Claims Subject to Arbitration

- 35.1 All claims, disputes and other matters in question between the Purchaser and the Contractor arising out of or relating to the Contract or the breach thereof (except for claims which have been waived by the making or acceptance of final payment as provided for in Clause 23.12 (Effect of Final Payment)) will be resolved in the following manner:
- 35.1.1 Disputes where the potential liability of either party exceeds the amount of one million (\$1,000,000) dollars shall be resolved in a court of competent jurisdiction where the

project is located. In any such litigation, the parties agree to waive their rights to a jury trial on all issues.

- 35.1.2 Disputes where the potential liability of either party is less than one million (\$1,000,000) dollars shall be resolved by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect, subject to the limitations of this Clause. The parties shall share the cost of arbitration equally. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this Clause will be specifically enforceable under the laws of the State of the facility where the work is being installed.

Notice of Arbitration

- 35.2 Notice of the demand for arbitration will be filed in writing with the other party to the Contract and with the American Arbitration Association. The demand for arbitration will be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

Consolidation and Joinder

- 35.3 Except as provided below, no arbitration arising out of or relating to the Contract shall include by consolidation, joinder or in any other manner any other person or entity who is not a party to this Contract unless:
- 35.3.1 The inclusion of such other person or entity is necessary if complete relief is to be afforded those who are already parties to the arbitration; and
- 35.3.2 Such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings; and
- 35.3.3 The written consent of the other person or entity sought to be included and of the Purchaser and Contractor has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but no such consent shall constitute consent to arbitration with any party not specifically identified in such consent.

Subcontractors

- 35.4 Notwithstanding the above, if a claim, dispute or other matter in question between Purchaser and Contractor involves the work of a Subcontractor, either Purchaser or Contractor may join such Subcontractor as a party to the arbitration between Purchaser and Contractor hereunder. For such situations, Contractor shall include in all subcontracts a specific provision whereby the Subcontractor consents to being joined in an arbitration between Purchaser and Contractor. Nothing in this Clause or in the provisions of the subcontract consenting to joinder shall create any claim, right or cause of action in favor of Subcontractor and against Purchaser that does not otherwise exist.

Number of Arbitrators

- 35.5 For disputes where the potential liability of either party is less than three hundred thousand (\$300,000) dollars, there will be a single arbitrator appointed by the American Arbitration Association from its National Panel in accordance with its normal procedures for selection of arbitrators. The parties also agree that the arbitrator shall be considered neutral and not a party arbitrator regardless of how selected or by whom appointed.

For disputes where the potential liability of either party is equal to or greater than three hundred thousand (\$300,000) dollars, there will be a panel of three (3) arbitrators appointed by the American Arbitration Association from its National Panel in accordance with its normal procedures for selection of arbitrators. The parties also agree that the arbitrators shall be considered neutral and not party arbitrators regardless of how selected or by whom appointed.

Judgment of Final Award

- 35.6 The award rendered by the arbitrator(s) will be final, judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal.

Mediation Prerequisite

- 35.7 Purchaser and Contractor agree that they shall first submit any and all unsettled claims, counterclaims, disputes or other matters in question between them arising out of or relating to the Contract or the breach thereof ('disputes') to mediation through an entity such as the American Arbitration Association under the Construction Industry Mediation Rules of the American Arbitration Association or such other qualified individual, institution or entity as the parties may agree prior to either of them initiating against the other a demand for arbitration or filing suit in a court of competent jurisdiction pursuant to this Clause, unless delay in initiating arbitration or suit would irrevocably prejudice one of the parties. The mediator of any dispute submitted to mediation under this Contract shall not also serve as an arbitrator of such dispute unless otherwise agreed. The parties shall share the cost of mediation equally.

Performance to Continue During Mediation, Arbitration or Litigation

- 35.8 Performance of the Contract shall continue during mediation, arbitration or litigation proceedings unless the Purchaser shall order the suspension thereof.

Applicable Law

Place of Performance

- 36.1 The Contract shall in all respects be governed by and interpreted in accordance with the Laws of the State where the Site is located.

Notices

Form of Notice

- 37.1 All notices made hereunder shall be in writing and shall be sent by registered mail, courier service or transmitted by facsimile with confirmation copy by mail to the other party at its principal place of business, or such other address as either party may hereafter specify.

Insurance

Insurance of Works

- 38.1 The Contractor shall, in the joint names of the Contractor, the Purchaser, and the Owner insure the Works and Contractor's Equipment and keep each part thereof insured for their full replacement value against all loss or damage from whatever cause arising. Such insurance shall be effective

from the date of the Contract Agreement, until fourteen (14) days after the date of issuance of a Final Acceptance Certificate in respect of the Works or any Section thereof; or if earlier, fourteen (14) days after the date when responsibility for the care of the Works passes to the Purchaser.

Owner Controlled Insurance Program (OCIP)

- 38.2 If the Owner has opted for an Owner Controlled Insurance Program, additional terms and conditions are to be included in the Special Conditions.

Extension of Works Insurance

- 38.3 The Contractor shall, so far as reasonably possible, extend the insurance under Clause 38.1 (Insurance of Works) to cover damage which the Contractor is responsible for making good pursuant to Clause 29 (Defects Liability), or which occurs while the Contractor is on Site for the purpose of making good a defect or carrying out the Tests on Completion during the Defects Liability Period or supervising the carrying out of the Performance Tests or completing any outstanding work or work which arises during the Defects Liability Period from a cause occurring prior to Final Acceptance and for which the Contractor is liable under Clause 30.4 (Injury to Persons and Damage after Responsibility for Care of Works Passes to Purchaser).

Application of Insurance Monies

- 38.4 All monies received under any such policy shall be applied toward the costs of the replacement and repair of the Works lost, damaged or destroyed. This provision shall not affect the Contractor's liabilities under the Contract.

Third Party Insurance

- 38.5 The Contractor shall, prior to the commencement of any work on the Site by the Contractor pursuant to the Contract, insure against its liability for death or personal injury occurring, before all the Works have been accepted, to any person (including any employee of the Purchaser) or damage to any property (other than property forming part of the Works) due to or arising out of the execution of the Works. The terms of the policy shall include a provision whereby the Contractor's indemnity obligations to the Purchaser and Owner shall be fulfilled in the event of any claim being made against the Purchaser and/or Owner in respect of which the Contractor would be entitled to indemnify the Purchaser and/or Owner against such claims and any costs, charges and expenses in respect thereof.

Insurance Against Accident, etc. to Workers

- 38.6 The Contractor shall insure and shall maintain insurance against its liability under Clause 30.5 (Accidents or Injury to Workers). The terms of any such policy shall also include the provision to indemnify the Purchaser and Owner mentioned in Clause 38.4 (Third Party Insurance), provided always that with respect to any persons employed by any Subcontractor, the Contractor's obligation under this Clause shall be satisfied if the Subcontractor shall have insured against the liability with respect to such person in such manner that the Purchaser and Owner is indemnified under the policy, but the Contractor shall require such Subcontractor to provide the Purchaser when requested, the policy, the receipt for the premiums or satisfactory evidence of insurance coverage.

General Insurance Requirements

- 38.7 All insurances shall be effected with an insurer and in terms to be approved by the Purchaser (such approval not to be unreasonably withheld) and the Contractor shall from time to time, when so required by the Purchaser, produce the policy and receipts for the premium or other satisfactory evidence of insurance coverage. The Contractor shall promptly notify the Purchaser for its

approval (which shall not be unreasonably withheld) of any alteration to the terms of the policy or in the amounts for which insurance is provided.

Remedy for Failure to Insure

38.8 If the Contractor shall fail to effect and keep in force the insurances referred to in these Conditions, the Purchaser may effect and keep in force any such insurance and pay such premiums as may be necessary for that purpose and deduct the amount so paid by the Purchaser from any monies due or which may become due to Contractor under the Contract or recover the same as a debt from the Contractor.

Joint Insurances

38.9 Wherever insurance is arranged under the Conditions in the joint names of the parties, or on terms containing provisions for indemnity, the party effecting such insurance shall ensure that the subrogation rights of the insurers against the other parties are waived and that such policy shall permit either:

38.9.1 The co-insured; or

38.9.2 The other parties to the Contract to be joined to and be a party to any negotiations, litigation or arbitration upon the terms of the policy or any claim thereunder.

Assignment and Subcontracting

Assignment

39.1 The Contractor shall not assign the benefit of the Contract in whole or in part or any of its obligations under the Contract.

Subcontracting

39.2 This contract shall be between the Purchaser and the Contractor only. Except where otherwise provided by the Contract, the Contractor shall not subcontract any part of the Works without the prior consent of the Purchaser.

The Contractor shall be responsible for the acts, defaults and neglects of any Subcontractor, its agents, servants or workers as fully as if they were its acts, defaults or neglects of the Contractor, its agents, servants or workers.

Confidential Details and Non-Compete Clause

Details Confidential

40.1 Contractor shall treat all information furnished by Purchaser pursuant to this Contract, including, without limitation, drawings, specifications, and related documents, to be confidential and proprietary to Purchaser. Contractor shall not disclose any such information to any person other than Contractor's staff or Subcontractors with a need to know, or use such information for any purpose other than for performing its obligations under this Contract. Upon request by Purchaser, the Contractor shall, at the election of Purchaser, either destroy or return to Purchaser all information and materials furnished by Purchaser under this Contract, and any copies thereof, including, without limitation, all drawings, specifications, and related documents. The obligation of confidentiality provided herein shall continue after the termination or completion of this Contract.

Non-Compete Clause

- 40.2 The Purchaser and Contractor will provide Plant to the end user customer including unspecified service and warranty beyond the warranty period contained herein. The non-compete term of this agreement shall remain in effect during the installation period and for five (5) years after start-up of Plant as the Purchaser takes responsibility for all Plant during this time period. Based on these circumstances, the Contractor is required to refer all related work for this Plant or any of the Purchaser's Plant to the Purchaser even if contacted by the end user or its designee.

Intellectual Property Rights

Indemnity Against Infringement

- 41.1 The Contractor shall indemnify the Purchaser against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any patent, registered design, copyright, trademark or trade name protected in the country where the Works are to be erected.

Conduct of Proceedings

- 41.2 In the event of any claim being made or action brought against the Purchaser arising out of the matters referred to in this Clause, the Contractor shall be promptly notified thereof and may at its own expense conduct all negotiations for the settlement of the same, and any litigation that may arise therefrom. The Purchaser shall not, unless and until the Contractor shall have failed to accept the conduct of the negotiations or litigation, make any admission which might be prejudicial thereto. The conduct by the Contractor of such negotiations or litigation shall be conditional upon the Contractor having first given to the Purchaser such reasonable security as shall from time to time be required by the Purchaser to cover the amount ascertained or agreed or estimated, as the case may be, of any compensation, damages, expenses and costs for which the Purchaser may become liable. The Purchaser shall, at the request of the Contractor, afford all available assistance for the purpose of contesting any such claim or action, and shall be repaid all reasonable expense incurred in so doing.

Purchaser's Indemnity Against Infringement

- 41.3 The Purchaser warrants that any design or instruction furnished or given to the Contractor by the Purchaser or on its behalf shall not be such as will cause the Contractor to infringe any patent, registered design, copyright, trademark or trade name in the performance of the Contract, and shall indemnify the Contractor in the same terms as the Contractor indemnifies the Purchaser under Clause 41.1 (Indemnity Against Infringement). The provisions of Clause 41.2 (Conduct of Proceedings) shall similarly apply to the Contractor in the event of a claim of Purchaser infringement.

Infringement Preventing Performance

- 41.4 If the Contractor shall be prevented from executing the Works, or the Purchaser is prevented from using the Works as a result of any infringement of a patent, registered design, copyright, trademark or trade name, and the party indemnifying the other in accordance with Clause 41.1 (Indemnity Against Infringement) and Clause 41.3 (Purchaser's Indemnity Against Infringement) is unable within ninety (90) days after notice thereof from the other party to procure the removal at its own expense of the cause of prevention, then:

- 41.4.1 In the case of an infringement which is the subject of the Contractor's indemnity to the Purchaser under Clause 41.1 (Indemnity Against Infringement), the Purchaser may treat

such prevention as a default by the Contractor and exercise the powers and remedies available to him/her under Clause 32 (Contractor's Default); and

- 41.4.2 In the case of an infringement which is the subject of the Purchaser's indemnity under Clause 41.3 (Purchaser's Indemnity Against Infringement), the Contractor may treat such prevention as a default by the Purchaser and exercise the powers and remedies available to the Contractor under Clause 33 (Purchaser's Default).

Limitations of Liability

Mitigation of Loss

- 42.1 In all cases, the party establishing or alleging a breach of contract or a right to be indemnified in accordance with the Contract shall be under a duty to take all necessary measures to mitigate the loss which has occurred provided that it can do so without unreasonable inconvenience or cost.

Indirect or Consequential Damage

- 42.2 The Purchaser shall not be liable to the Contractor by way of indemnity or by reason of any breach of contract or of statutory duty or by reason of tort (including but not limited to negligence) for any loss of profit, loss of use, loss of production, loss of contracts or for any financial or economic loss or for any indirect or consequential damage whatsoever that may be suffered by the Contractor.

Limitation of Contractor's Liability

- 42.3 The Contractor shall have no liability to the Purchaser for or with respect to or in consequence of any loss of or damage to the Purchaser's property which shall occur after the expiration of the Defects Liability Period.

Exclusive Remedies

- 42.4 The Purchaser and the Contractor intend that their respective rights, obligations and liabilities as provided for in these Conditions shall be exhaustive of the rights, obligations and liabilities of each of them to the other arising out of, under or in connection with the Contract or the Works, whether such rights, obligations and liabilities arise with respect to or in consequence of a breach of contract or of a statutory duty or a tortious or negligent act or omission which gives rise to a remedy at common law. Accordingly, except as expressly provided for in these Conditions, neither party shall be obligated or liable to the other in respect of any damages or losses suffered by the other which arise out of, under or in connection with the Contract or the Works, whether by reason or in consequence of any breach of contract or of statutory duty or tortious or negligent act or omission.

Signs

Permissible Signage

- 43.1 No sign, flag or advertising shall be displayed on the premises, or on any temporary structure. Personal field trailer signage with Contractor company name is acceptable.

The Contractor shall furnish all safety and warning signs required for his work.