

INX International Ink Co.
General Terms and Conditions-Construction Related Transactions

1. **The Work.** The "Work" shall consist of the work/project described on the INX International Ink, Co.'s (the "Buyer") Purchase Order, to which these Terms and Conditions are appended.

(a) **Compliance with Laws.** The Work shall be performed in strict accordance with all applicable federal, state and local codes, laws, permits, orders, ordinances and any rules and regulations promulgated thereunder (collectively "Laws"). Seller represents and warrants that it is and shall be properly authorized to do business in any jurisdiction where it shall perform Work and that it shall be properly licensed by all necessary governmental authorities for the Work contemplated by these Terms and Conditions or any Purchase Order hereunder. Seller shall, at its sole cost, obtain all permits required for Seller to perform the Work. It is Seller's responsibility to maintain current copies of all licenses and certificates of competency required by all jurisdictions where Seller shall perform the Work, and to provide and maintain with the Buyer current copies of these documents to the Buyer before commencement of the Work, and continually throughout the course of any/all projects.

(b) **Shop Drawings.** Seller shall submit such shop drawings, product data, samples and similar submittals (collectively, the "Shop Drawings") to the Buyer as are required to accomplish the Work with reasonable promptness and in such sequence so as to cause no delay in the Work or in the activities of the Buyer or other Sellers. The Buyer shall review and approve all Shop Drawings with reasonable promptness. The Buyer's review and approval of the Shop Drawings is not an endorsement or approval of the safety or design of the Shop Drawings or their compliance with Laws. Seller is solely responsible for such matters. For purposes of these Terms and Conditions, Shop Drawings are drawings, diagrams, schedules and other information specially prepared for the Work. Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Seller to illustrate materials or equipment used in connection with the Work. Samples are examples of illustrative material or workmanship and establish standards by which the Work will be evaluated.

(c) **Protection of the Work.** Seller shall take all steps necessary to protect the Work from loss or damage by the elements, including fire, flood, rain, wind, hail, sand, cave-ins, collapses, and other hazards, and by defective or incomplete labor or materials of others, or otherwise. In the event of such loss or damage, Seller shall promptly replace and restore the Work or any damaged portion thereof at its expense.

(d) **Overtime and Extra Labor and Equipment.** Seller shall, at its expense, work such overtime and engage such extra labor and equipment as may be required to ensure the diligent prosecution and timely completion of the Work.

(e) **Reduction in the Work.** The Buyer by written notice to Seller, may reduce the amount of the Work to be completed by Seller, without any liability to Seller except to pay for work satisfactorily completed.

(f) **Permitted Delay.** If Seller believes that it has been delayed in its performance or completion of the Work as a result of (1) acts of God, public utilities or public bodies, (2) the elements, (3) modifications requested by the Buyer, and (4) other matters Seller could not reasonably anticipate, control or avoid ("Claimed Delays"), Seller shall make a request for additional time within twenty-four (24) hours of the date of the Claimed Delay. To the extent that it affects the critical path for performance of the Work, and the Buyer agrees that Seller is entitled to additional time for the Claimed Delay, Seller shall be granted additional time for the number of days agreed to by the Buyer. Seller shall not be entitled to any additional compensation for any Claimed Delays.

2. **Job Site Conditions.**

(a) **Supervision of the Work.** Seller shall supervise and direct the Work at all times. In this regard, Seller shall (1) employ a competent and qualified superintendent, foreman or other qualified person and any necessary assistants; (2) enforce strict discipline and good order among its employees (and those of its Sellers and suppliers); (3) faithfully and rigidly observe and ensure that its agents, employees, suppliers and Sellers observe all (A) laws and prudent business practices and (B) rules of the Buyer and Seller in effect at the project site from time to time; and (4) not employ or allow at the project site any unfit person or anyone not skilled in the work assigned to him. Any person that the Buyer determines to be incompetent, disorderly or otherwise unsatisfactory shall be immediately removed from the project site and shall not again be employed at the project site or at any other job of the Buyer. At all times during the Work, Seller shall not allow its own employees, its Sellers' employees, or any other persons associated with the Work to (1) consume alcoholic beverages or illegal substances at the project site, (2) perform any labor or work or traveling to or from the project site while under the influence of alcohol or illegal substances, and (3) bring pets or unauthorized persons or guests to the project site.

(b) **No Defects.** Seller's commencement of the Work constitutes Seller's acceptance of the Work of other Sellers previously completed or commenced. Seller waives all claims against the Buyer with respect thereto. If Seller discovers a defect in the Work or in the work of others, Seller shall immediately notify the Buyer of such defect.

(c) **Signs.** Seller shall not post any sign at or in the vicinity of the project site nor permit any of its suppliers, Sellers or employees to do so without the prior written approval of the style, size, type, color and location of the sign by the Buyer and any applicable governmental agency.

(d) **Integration of the Work.** If necessary to integrate the Work with the work of others at the project site, Seller shall (1) cut, fit, patch or plaster the Work so that it will be properly integrated with, receive or be received by, as applicable, the work of others; and (2) alter the work of others provided (a) the prior written consent of the Buyer and the other Sellers whose work will be affected is obtained; and (b) Seller patches, plasters, paints, repairs and restores, at its expense, such altered work of others.

(e) **Cooperation with Others.** Seller shall communicate and cooperate with other Sellers whose work may affect or be affected by the Work. Any disputes between Seller and any other Sellers at the project site shall be settled by the Buyer through its Designated Representative.

(f) Hazardous Material. Seller shall not permit any Hazardous Material (as defined below) to be located, used, incorporated into the Work or brought onto the project site in connection with the Work unless (1) absolutely necessary because no alternative is available, (2) the precise nature and quantity of the Hazardous Material is specified in writing to the Buyer, (3) the prior written approval of the Buyer is obtained, and (4) Seller complies with all applicable Laws and prudent business practices concerning the Hazardous Material. Except for any Hazardous Material which Seller has agreed to remove and remediate as a part of the Work, if Seller encounters any material it reasonably believes to be Hazardous Material, or becomes aware of any incident involving Hazardous Material at the project site, Seller shall immediately stop the Work in the area so affected and immediately report the same to the Buyer. Seller shall also immediately notify the Buyer of any notice Seller receives concerning the presence or use of Hazardous Material at the project site. Seller shall be liable for all on- and off-site disposal or transport of Hazardous Material (and shall sign any manifest for the transport or storage of such Hazardous Material), and for any discharge, release, injury to any person, or injury or damage to any property resulting from the use of Hazardous Material in the performance of the Work. Seller shall, at its expense, cause the removal of the Hazardous Material and remedy any associated problems in accordance with applicable Laws and prudent business practices. "Hazardous Material" shall mean (1) any "Hazardous Material" as defined by the law of the state in which the project is located; (2) any substance or matter that results in liability to any person or entity from discharge of or exposure to such substance or matter under any statutory or common law theory; (3) pesticides, asbestos, formaldehyde, polychlorinated biphenyls, solvents, petroleum and motor fuel hydrocarbon material; and (4) any other substance or matter that is subject to any federal, state or local agency law, order or requirement for removal, treatment or remedial action.

To the extent permitted by law, and without in any way limiting any other indemnity obligation under these Terms and Conditions, Seller shall indemnify, defend (at Seller's sole cost and with legal counsel acceptable to the Buyer) and hold the Buyer, and its respective officers, directors, agents, employees, representatives, shareholders, partners, affiliates, successors and assigns, harmless from and against any and all claims, losses, costs or liabilities arising out of an incurred connection with removing or remediating any Hazardous Material on or about the project site or transported on, to, from or about the project site by Seller. This indemnity shall be effective during and after completion of the Work.

(g) Cleanup, Storage and Safety. Seller shall maintain the site of the Work, and the vicinity thereof, in a clean, neat and safe condition, to the Buyer's satisfaction and shall (1) store all materials, supplies and equipment in appropriate containers or enclosures that are secure from access by persons not associated with the Work in locations acceptable to the Buyer; (2) remove from the project site all excess material and debris nightly during the performance of the Work, and all equipment, unused material and supplies and temporary structures upon completion of the Work; and (3) return each fence, barrier and obstruction that is temporarily relocated or displaced by Seller to its original position and condition immediately after its relocation or displacement is no longer necessary. Any storage space or facility the Buyer makes available to Seller to store or protect property is solely for Seller's convenience and shall not release Seller of its responsibility or liability for such property or for any liability or damages arising out of Seller's use of the storage space or facility. No temporary structures, including construction trailers or other temporary office facilities, shall be placed or maintained at or in the vicinity of the project site without the Buyer's prior written approval. Seller shall take all reasonable safety precautions in the performance of the Work, including compliance with all OSHA requirements. Seller shall immediately notify the Buyer of any injury to any employee or agent of Seller occurring at the project site.

3. Examination by Seller.

(a) Review of Relevant Matters. Seller has examined, investigated and familiarized itself with: (1) the nature and location of the project site; (2) the physical characteristics of the project site and improvements of other Sellers on which the Work is to be performed; (3) the character, quality and quantity of the materials, equipment and facilities necessary to complete the Work in a good and workmanlike manner; (4) the general and local conditions relating to the Work; and (5) all other matters that may affect Seller's performance of these Terms and Conditions.

(b) No Reliance on the Buyer. Seller enters into these Terms and Conditions relying solely on its own examination and investigation of the foregoing matters and not on any representation or information relating to the project site or the Work (or the completion thereof) made by the Buyer or any agent of the Buyer or not expressly contained in these Terms and Conditions. Seller assumes all risk of unknown project site conditions and releases the Buyer of any claim for additional compensation resulting from concealed or unknown and unusual project site conditions.

4. Withholding Payment.

(a) Reasons for Withholding. The Buyer may withhold payments otherwise due Seller under these Terms and Conditions for any of the following reasons:

- 1) Omission of any Work required by these Terms and Conditions, or Seller's failure to cure defective or damaged work;
- 2) Failure to submit to the Buyer all information and waivers and releases required under these Terms and Conditions;
- 3) Mechanics' liens, materialmen's liens, stop notices or bonded claims are filed or recorded, or reasonable evidence indicating the probable filing or recording of such liens, notices or claims by Seller's suppliers or Sellers, in which case the Buyer may (a) require Seller to bond around the lien, notice or claim, if applicable; and/or (b) withhold one hundred fifty percent (150%) of the amount sought;
- 4) Seller's failure to make payments properly to Sellers, suppliers, materialmen, laborers, or other persons entitled to file a mechanics' lien, materialmen's lien, stop notice or claim as well as to union fringe benefit trust funds (to the extent required);
- 5) The existence of reasonable doubt by the Buyer that the Work will be completed for the balance of the Contract Price then unpaid, unless Seller deposits with the Buyer funds in the amount of such suspected deficiency or performs a sufficient portion

of the remaining Work at its sole cost so that such portion of the Contract Price then remaining unpaid is determined by to be sufficient to complete the Work;

6) Seller's failure to complete the Work, or any reasonable indication that the Work will not be completed within the time required in these Terms and Conditions;

7) Seller's failure to construct, install or perform the items of the Work as required in these Terms and Conditions (including if the Work does not pass any official inspection, or if Seller attempts to or does install any item different than that required by these Terms and Conditions or a valid Change Order), or any reasonable indication that Seller will be unable to perform the terms of the Work as required in these Terms and Conditions; and

8) Any other grounds for withholding payment permitted by State or Federal Law, or as otherwise permitted by these Terms and Conditions.

(b) Payment of Withheld Amount. Whenever the grounds giving rise to the above withholding have been removed, the Buyer shall pay Seller the amount withheld, less any expenses or damages the Buyer incurs as a result of the withholding, the cause of the withholding or the removal of the cause of the withholding. If any of Seller's laborers, Sellers, suppliers or materialmen are not paid, the Buyer may pay such persons directly. Any payment the Buyer makes directly to any of Seller's laborers, Sellers, suppliers or materialmen, or for their benefit, shall be deemed payment to Seller and shall be credited against the Contract Price.

5. Changes in the Work.

(a) Change Order Request. The Buyer may at any time and from time to time order additions, deletions or other modifications to the project (a "Work Change") by submitting a written change order request to Seller ("Change Order Request"). Upon agreement between the Buyer and Seller as to the scope and price for a Work Change, the Buyer and Seller shall execute a change order ("Change Order"). The Buyer's Designated Representative is the only person authorized to sign Change Order Requests or a Change Order. Seller shall not be compensated for any Work Change in the absence of a signed Change Order. Upon receipt of a duly authorized Change Order, Seller shall perform any extra work, make any substitutions in the Work, or omit any portion of the Work required thereby and shall not thereafter perform any work or order materials that are inconsistent with such Change Order. Seller or anyone acting for or on behalf of Seller shall not be entitled to any additional compensation for any labor, materials or equipment performed or ordered after receipt of a duly authorized Change Order if the same are not consistent with the Change Order. Seller shall (1) maintain records of all duly authorized modifications made to the Work and (2) notify the Buyer's Representative of each such duly authorized modification immediately upon making the modification.

(b) Change Order Statement. Upon receipt of a Change Order Request, Seller shall promptly furnish to the Buyer a statement in a form acceptable to the Buyer ("Change Order Statement") setting forth in detail, with a labor and material breakdown by trades and work classifications, (1) Seller's estimate of any changes in the Contract Price attributable to the Change Order Request, and (2) any proposed adjustment of the Completion Date resulting from the Change Order Request. Such Change Order Statement shall be delivered to the Buyer within five (5) business days after Seller's receipt of a Change Order Request. Seller shall have no claim for additional compensation as a result of the Change Order Request unless a Change Order Statement is delivered to the Buyer as required by this paragraph and a Change Order is executed by the Buyer and Seller.

(c) Adjustments to Contract Price.

1) Upon receipt of a Change Order Statement, the Buyer shall determine the adjustment, if any, to the Contract Price. Seller shall be deemed to have accepted the adjustment or non-adjustment to the Contract Price if the Buyer does not receive written objection notice from Seller within five (5) business days after Seller's receipt of notice of the amount of the adjustment or non-adjustment to the Contract Price from the Buyer. The Work shall not be delayed or interrupted during resolution of the adjustment or non-adjustment to the Contract Price.

2) Alternatively, and in the Buyer's sole discretion, the Buyer may ask Seller to submit bid prices for the modifications in the Work. The Buyer may also accept bids from other Sellers. If bids from other Sellers are lower than that of Seller, The Buyer will afford Seller the opportunity to adjust its bid accordingly, If Seller does not agree to adjust its bid accordingly within five (5) business days, the Buyer may, at its option, renegotiate or terminate these Terms and Conditions, the Purchase Order, and any related work to be completed.

6. Warranty, Testing and Correction.

(a) Warranty of Materials and Workmanship. Notwithstanding that any labor, equipment, or material furnished or installed by Seller has been approved or accepted by the Buyer, or any governmental agency, Seller expressly warrants that all labor, material, equipment, and fixtures furnished or installed by it (or by its Sellers or materialmen) hereunder shall be of good quality, free of any faults and defects including patent or latent defects, and shall be completed as required in these Terms and Conditions. This warranty shall survive as long as the Buyer may be held liable for the matters warranted hereunder (in their respective roles as Seller, builder or seller) until all applicable statutes of limitations have expired, but in no event less than three (3) years after the date of completion and final acceptance of the Work. The above warranty shall not limit or affect other warranties or guarantees expressly or implicitly made by Seller or any of its Sellers or materialmen and shall not limit or affect any remedies concerning express or implied warranties or negligent or willful acts or omissions of Seller or any of its Sellers or materialmen. The above warranty shall be for the benefit of the Buyer and its respective successors and assigns.

(b) Testing and Inspection of the Work. Seller shall, at its expense, obtain all inspections and approvals required by any Laws or other guidelines of any public authority having jurisdiction over the Work. Seller shall furnish the Buyer with originals of all certificates of inspection, testing and approval. The Buyer shall not be responsible for reviewing, nor shall its review and acceptance of the Work or any part

thereof be deemed an endorsement or approval of, the safety or design of the Work or any part thereof or a determination of conformance with Laws; provided, however, that the Buyer may test, inspect and approve the Work or cause the same to be accomplished without notice to Seller. Seller shall make all portions of the Work available for inspection, testing and approval by the Buyer and all applicable governmental authorities. Seller shall notify the Buyer in writing of any inspection or testing that must be performed within a certain time period so as not to require modification of the Work or the work of others in connection with the inspection, testing and approval. If Seller fails to so notify the Buyer, Seller shall assume full responsibility for and costs of the uncovering of the Work or the work of others to allow the required inspection, testing and approval, and the restoration of the Work and the work of others so affected.

(c) **Correction and Removal of Defective Work.** Seller shall, at its own expense, provide all materials and labor to correct any defects in the Work, materials or equipment supplied by Seller (together with any damage to all finishes, fixtures, equipment and personal property damage as a result of such defects) in a manner reasonably satisfactory to the Buyer. Seller shall begin all corrective work necessary to cure any defect in the Work, materials or equipment supplied by Seller within three (3) calendar days after receiving written notice from the Buyer; provided, however, that any defect related to plumbing, heating, electrical, and roofing shall be completed immediately after the notice to repair if Seller is performing such type of work or supplying appurtenant equipment (e.g., HVAC). Seller shall diligently prosecute all corrective work to completion. Seller shall report to the Buyer in writing all action Seller takes to remedy the defective Work, materials or equipment and shall obtain The Buyer's signature acknowledging its satisfaction of the corrective work. If any defect is not satisfactorily remedied in the above specified time, or if the Buyer elects (in its sole discretion) to remedy the defect, the Buyer may, at its election, remedy such defect. If the Buyer remedies a defect for Seller, Seller shall pay to the Buyer the costs of all corrective work plus interest at the highest rate authorized by law from the date the corrective work is completed until the correction costs are paid by Seller.

7. **Insurance.** Seller shall, at its sole expense, procure, maintain, and provide proof of insurance coverage under policies of commercial general liability, professional liability (if applicable), automobile liability, and workers' compensation and employer's liability, during the entire progress of the Work, including the timeframe specified for Completed Operations coverage, that satisfies the minimum requirement set forth by the Buyer. Seller agrees to include these Insurance Requirements in their entirety in any lower-tier subcontract executed by them for any part of their Scope of Work to be performed hereunder. The Buyer shall be named as additional insured under the Occurrence form Commercial General Liability policy, which shall stipulate that the insurance afforded the additional insureds shall apply as primary insurance and that any other insurance carried by The Buyer or will be excess only and will not contribute with this insurance. If Seller fails to procure, maintain or pay for the required Insurance, the Buyer shall have the right (but not the obligation) to secure same in the name of and for the account of Seller, in which event Seller shall pay the cost thereof and shall furnish, upon demand, all information that may be required to procure such insurance. The insurance requirements set forth in this Section shall in no way limit Seller's liability arising out of the Work performed under these Terms and Conditions, or related activities. The inclusions, coverage and limits set forth in this Section are minimum inclusions, coverage and limits. Nothing contained in this Section shall be construed as limiting the type, quality or quantity of insurance coverage that Seller should maintain. Seller shall be responsible for determining appropriate inclusions, coverage and limits which may be in excess of the minimum requirements set forth in this Section. Seller's failure to comply fully at all times with the insurance requirements of these Terms and Conditions is a material breach of these Terms and Conditions.

8. **Indemnification and Release.**

(a) **Indemnity.** To the fullest extent permitted by applicable law, Seller shall indemnify, defend (at Seller's sole expense and with legal counsel approved by the Buyer, which approval shall not be unreasonably withheld), protect and hold harmless the Buyer, all subsidiaries, divisions and affiliated companies of the Buyer, and all of such parties' representatives, partners, members, designees, officers, directors, shareholders, employees, architects, consultants, agents, successors and assigns (collectively, the "Indemnified Parties"), from and against any and all claims (including claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including attorneys' fees, disbursements and court costs, and all other professional, expert or consultants' fees and costs) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise from or in any manner relate (directly or indirectly) to the Work (including defects in workmanship or materials and/or design defects [if the design was that of Seller or its agents]) or Seller's presence or activities conducted on the project (including, without limitation, the negligent and/or willful acts, errors and/or omissions of Seller, its principles, officers, agents, employees, vendors, suppliers, consultants, sub-Sellers, and anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them). Notwithstanding the foregoing, nothing herein shall be construed to require Seller to indemnify an Indemnified Party from any Claim arising from the sole or active negligence or willful misconduct of that Indemnified Party. The duty to defend hereunder is wholly independent of and separate from the duty to indemnify, and such duty to defend exists regardless of any ultimate liability of the Buyer or Seller. Such defense obligation shall arise immediately upon presentation of a Claim by any party and written notice of such Claim being provided to Seller. Payment to Seller by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party shall not be a condition precedent to enforcing such Indemnified Party's rights to indemnification hereunder. Seller's indemnification obligation hereunder shall survive the expiration or earlier termination of these Terms and Conditions until such time as it is determined by final judgment that action against the Indemnified Parties for such matter indemnified hereunder is fully and finally barred by the applicable statute of limitations. Seller's liability for indemnification hereunder is in addition to any liability Seller may have to the Buyer for a breach by Seller of any of the provisions of these Terms and Conditions. Under no circumstances shall the insurance requirements and limits set forth in these Terms and Conditions be construed to limit Seller's indemnification obligation or other liability hereunder- The express indemnification provisions set forth in these Terms and Conditions shall solely govern all issues of indemnification and contribution between the parties.

(b) **Release.** Seller waives and releases the Buyer and from all claims, demands, expenses, debts, damages, and liabilities, including lost wages, pain and suffering, permanent or temporary disability, medical and hospital expenses, attorneys' fees, and costs of repair and replacement of Seller's property, which arises from or relates to (1) the physical condition, security or maintenance of the project site and the vicinity thereof; (2) vandalism, theft, or any other willful or negligent act by any person or entity at the project site or in the vicinity thereof, including, the operation of a motor vehicle; or (3) the activities, omissions or behavior, whether or not negligent, of suppliers and other Sellers and Sellers whose services have been or are being utilized by or on behalf of the Buyer, as well as the activities, omissions or behavior of their agents and employees, whether or not actively or passively negligent. Nothing in this subparagraph (b) shall release any of the Indemnified Parties from liability for their exclusive willful or grossly negligent acts.

9. **Liens and Stop Notices.** Seller shall pay when due all claims asserted and debts in favor of persons or entities who furnish labor, material, services, fixtures, or equipment applied to or utilized in the performance of the Work. Seller shall not cause or permit (a) the recordation of any claim of lien on any of the 's property, and (b) the garnishment or attachment of funds held by the Buyer by promptly satisfying all claims and debts asserted against Seller or Seller's Sellers by such persons or entities. In addition, Seller shall use all possible means to (a) cause the 's property to be released from all claims of lien, (b) release all funds withheld from the or the Buyer on account of stop notices from the effect of such notices, and (c) cause the release of all liens or claims, by bond or otherwise, against the or The Buyer within fourteen (14) days after each such claim of lien has been recorded against the 's property. Seller shall not apply any payments made by the Buyer or the to satisfy claims of suppliers, materialmen, Sellers, utilities, or insurance companies unless such claims have arisen as a result of the Work described in the Invoice being paid by the Buyer.

10. **Bonding.**

(a) **Faithful Performance Bond.** The Buyer may at any time require Seller to furnish a faithful performance bond issued in a form and by a surety Buyer acceptable to the Buyer securing the Seller's faithful performance of its obligations under these Terms and Conditions, in an amount not less than the value of the Work to be performed. The Buyer shall pay the bond premium amount up to a maximum of one percent (1%) of the Contract Price.

(b) **Labor and Material Payment Bond.** The Buyer may at any time require Seller to furnish a labor and material payment bond issued in a form and by a surety Buyer acceptable to the Buyer, securing Seller's payment of all monies owed to its employees, Sellers, suppliers and any other persons or entities who may claim a mechanics' lien or materialmen's lien upon the project, in an amount not less than the value of the Work to be performed.

11. **Default and Remedies.**

(a) **Failure to Perform.** Seller's failure to comply with any of the provisions of these Terms and Conditions shall constitute a default by Seller, and the Buyer may, at its sole election and without notice to Seller, take any one or more of the following remedial actions, none of which shall be deemed exclusive of any other:

1) Any remedy provided elsewhere in these Terms and Conditions.

2) If Seller fails to remedy any default within forty-eight (48) hours after receipt of written notice or such longer period as is reasonably necessary if such breach cannot be cured within such forty-eight (48) hour time period (provided Seller commences to cure immediately and thereafter diligently prosecutes such cure to completion), the Buyer may elect to terminate Seller's right to perform the Work in whole or in part without liability to Seller for any Work thereafter performed by the Buyer or anyone else. In such event, the Buyer may: (1) complete the Work or correct any failures in the Work and procure such equipment, labor and materials as is necessary therefor, and in so doing use any of Seller's equipment and consume any materials on the project site until it is completed, and Seller shall pay the Buyer the cost of such completion or correction, plus fifteen percent (15%) of such costs to compensate the Buyer for overhead and administration; (2) sue for and recover from Seller the reason able value of all or a portion of the cost to complete the performance of the Work; (3) sue for and recover from Seller all damages arising out of such default, including but not limited to loss of profits and recovery of any and all costs and expenses whatsoever directly or indirectly related to such default; or (4) pursue all alternatives under (1), (2) and (3). If the Buyer completes the Work, Seller shall receive no further payment until the Work is completed. When the Work is completed, the Buyer shall pay Seller the amount owing on the Contract Price less all of the costs the Buyer incurred in completing the Work, the fifteen percent (15%) markup described above and any attorneys' fees incurred by the Buyer as a result of such breach.

3) The Buyer may withhold payment of any monies due until the default has been cured.

4) Seller acknowledges that if Seller breaches these Terms and Conditions by delay in commencing or completing the Work (for any reason other than a Permitted Delay), the damages the Buyer would suffer ("Delay Damages") would include, among other items, losses, payments, liabilities and damages resulting from additional direct costs (including such items as payroll, cost of supervision, cost of site office facilities, project site telephone and rental value of any equipment not being utilized in connection with the other Work being performed at the project site), additional overhead expenses of the main office (including such items as salaries of executives and all other personnel, rent, and utilities), increased labor and material costs, and damages the Buyer may be required to pay to other Sellers and third parties. If liquidated damages are assessed against the Buyer as a result of Seller's delays, Seller shall reimburse the Buyer for all such damages. Seller will also reimburse the Buyer for any actual Delay Damages suffered by the Buyer.

5) The Buyer may set off the costs to complete the Work against monies due to Seller under any other contract between the Buyer (or any entity owned or controlled by the Buyer) and Seller (or any entity owned or controlled by Seller), whether such contract is in effect before or after these Terms and Conditions.

6) The Buyer may pay any sums to any such persons, firms, itself or other entities to whom Seller is obligated and to charge such sums paid to the account of Seller without recourse by Seller and without inquiry as to the validity of such obligation and the correctness of the amount thereof. If such sum is greater than the amount then due Seller, the excess shall be a debt due from Seller to the Buyer and shall bear interest at the highest rate permitted by law.

7) Any and all such other remedies as may be provided at law or in equity.

(b) **Termination Events.** The Buyer may terminate Seller's right to continue performance of the Work by giving Seller at least twenty-four (24) hours written notice at any time after the occurrence of any of the following events: (1) the filing of a petition for relief under the

Bankruptcy Code or the institution of any other insolvency proceedings by, against, or on behalf of Seller; (2) the appointment of a receiver for Seller; (3) the death, dissolution or liquidation of Seller; (4) the transfer to others of more than twenty-five (25%) of the assets or ship interest of Seller; and (5) any act of insolvency by Seller. If an order for relief is entered under the Bankruptcy Code for the benefit of Seller, the Buyer may terminate Seller's right to continue performance of the Work by giving twenty-four (24) hours' notice to Seller, its trustee and its surety, if any, unless Seller, the surety or its trustee: (1) immediately cures or takes action to cure all defaults of Seller, (2) provides the Buyer adequate assurance of performance under these Terms and Conditions, (3) makes the Buyer whole for all loss suffered by the Buyer as a result of Seller's default, and (4) assumes all obligations of Seller within all contractual and statutory time limits.

(c) Termination by the Buyer. The Buyer may also terminate these Terms and Conditions at any time by notifying Seller in writing if (1) it sells the property on which the Work is being performed, (2) the economic climate does not warrant proceeding with the project of which the Work is a part, or (3) is unable to procure a construction loan from a project lender on terms satisfactory to the Buyer. In such circumstance, Seller shall be entitled to receive any amounts for portions of the Work performed to the satisfaction of the Buyer, less any payments made before the date these Terms and Conditions is terminated. Seller shall not be entitled to any additional compensation or damages as a result of termination of these Terms and Conditions pursuant to this Paragraph 11(c).

(d) Assignment of Contracts Upon Termination. If Seller's right to perform the Work is terminated, any agreement of Seller relating to the Work with third parties shall, at the election of the Buyer, be assigned to the Buyer without the need for further documentation.

(e) Costs of Enforcement. If the Buyer is required to enforce any provision of these Terms and Conditions as a result of any breach of the same by Seller, Seller shall reimburse the Buyer for the costs of enforcement, including, but not limited to court costs, filing fees, and reasonable attorneys' fees.

12. Seller Representations. Seller represents and warrants the following to the Buyer:

(a) Authority. Seller is duly organized, validly existing and in good standing under the law of the State in which the project is located. Seller has all necessary powers to carry on its business. Seller has the right, power, legal capacity and authority to enter into these Terms and Conditions. These Terms and Conditions and each document or instrument to be executed by Seller pursuant to these Terms and Conditions, are and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms. Seller has taken all necessary action to authorize the execution, delivery and performance of these Terms and Conditions. No further, approval or authority of any nature or other action by any person or entity is required in connection with the execution and delivery of these Terms and Conditions by Seller, and the performance of the Work by Seller.

(b) Litigation. Except as disclosed to the Buyer in writing concurrently with the execution of these Terms and Conditions by Seller, there is no suit, action, arbitration, or legal administrative or other proceeding, or non-insured workers' compensation claim or governmental investigation pending or threatened, after doing diligent inquiry, against or affecting Seller. Seller is not in default concerning any order, writ, injunction or decree of any federal, state, local or foreign court, department, agency or instrumentality. No attachments, execution proceedings, assignments for the benefit of creditors and insolvency, bankruptcy, reorganization or other proceedings are pending or threatened against Seller or to its knowledge, any general partners of Seller nor are any such proceedings contemplated.

(c) Financial Capability. Seller is and will remain financially solvent and financially capable of discharging its obligations under these Terms and Conditions.

(d) Skill. Seller and everyone acting on its behalf in connection with the Work is skilled in performing the Work and in the means, methods, techniques, sequences and procedures related to completing the Work in the most expeditious and economic manner consistent with the interest of the Buyer. Seller is familiar with all manufacturer's instructions and specifications concerning the Work and the application, connection, erection and use of all equipment, materials and supplies incorporated into or that are a part of the Work. Seller is also familiar with all Laws applicable to the Work, has made a thorough investigation and inspection of the physical condition of the project site, and will remain familiar with all the physical and economic risks associated with the performance of the Work and assumes all such risks.

(e) Licenses. Seller has and shall maintain all licenses and permits necessary to perform the Work and all other obligations of Seller under these Terms and Conditions.

(f) Agreement. Seller has read and has familiarized itself with all of the provisions of these Terms and Conditions on its own and without relying on any information obtained from the Buyer.

13. Dispute Resolution Procedure. In the event of any dispute or claim between the Buyer and which directly or indirectly involves Seller's Work, or in the event of any dispute or claim between the Buyer and Seller which directly or indirectly involves a claim against for either additional compensation or an extension of time, Seller agrees to be bound to the Buyer, and the Buyer agrees to be bound to Seller, by all decisions, findings or determinations made by the person so authorized in the Prime Contract, an administrative agency, court of competent jurisdiction, or arbitration panel, whether or not Seller is a party to the proceedings before said person, agency, court or panel. If any dispute or claim is prosecuted or defended by the Buyer, Seller agrees to cooperate fully with the Buyer and to furnish all documents, statements, witnesses and other information required by the Buyer for such purpose and shall pay or reimburse the Buyer for all expenses and costs, including reasonable attorneys' fees, incurred in connection therewith to the extent of Seller's interest in such claim or dispute. It is expressly understood and agreed in connection with the determination of such claims or disputes that, as to any and all work done and agreed to be done by Seller, and as to any and all damages, if any, incurred by Seller in connection with the project, the Buyer shall never be liable to Seller to any greater extent than is liable to the Buyer. If a dispute between the Buyer and Seller is not subject to the dispute resolution procedure set forth in the Prime Contract, and does not involve in any way, the dispute shall be resolved in a court of competent jurisdiction.

14. Confidentiality. Seller acknowledges that Seller will receive (actively or passively) confidential and/or proprietary information from the Buyer and/or during the course of its Work under these Terms and Conditions. Unless otherwise specified, Seller shall presume that all

information Seller receives either from the Buyer or for the purposes of performing the Work, or which come to the attention of Seller while performing the Work, constitutes a valuable asset of and is proprietary to and/or the Buyer, Seller further acknowledges that the Buyer and/or may maintain records, documents, or other information belonging to the Buyer, or other third parties, and may have fiduciary or legal responsibilities to maintain this information as confidential and proprietary information. Seller agrees not to use or disclose any information it receives (actively or passively) or knowingly permit its employees, officers, or agents to use or disclose any such information to any non-employee of Seller or to any employee of Seller not having a specific need-to-know in performing the Services authorized by these Terms and Conditions.

Seller also agrees that all designs, plans, reports, specifications, drawings, inventions, processes, and other information or items produced by Seller for the purposes of performing the Work will be assigned to the Buyer or (depending on the relevant Prime Contract) as the sole and exclusive property of either the Buyer or Seller shall instruct its employees, officers, and agents not to use, disclose, or transfer to any third party any of said information whether oral or written, without the prior written consent of the Buyer, and agrees to take all reasonable steps necessary to ensure fulfillment of this obligation.

In the event that a subpoena or other legal process is served upon the Buyer that in any way concerns information disclosed by the Buyer to Seller, Seller shall immediately notify the Buyer upon receipt of the subpoena or legal process and shall cooperate with the Buyer in any lawful effort to contest the validity of the subpoena or other legal process.

This provision shall survive the termination of these Terms and Conditions.

15. Miscellaneous.

(a) Nondiscrimination. Seller shall comply with all nondiscrimination Laws to the extent applicable to Seller's performance of these Terms and Conditions.

(b) Joint Payment. The Buyer may, at its election and without the Seller's consent, make any payment due hereunder jointly to Seller and any of its Sellers, materialmen, suppliers, and any other persons or entities who may claim a mechanics' lien or materialman's lien as a result of the Work.

(c) Construction. Whenever used in these Terms and Conditions, the singular shall include the plural and the plural the singular. The word "including" shall mean "including without limitation."

(d) No Waiver. The Buyer's express or implied waiver of any provision of these Terms and Conditions shall not constitute a future or further waiver by the Buyer of the same or other provision of these Terms and Conditions. Delay in the enforcement of any remedy, or in the exercise of any right, shall not be a waiver.

(e) Entire Agreement. These Terms and Conditions and all of the Purchase Orders, addenda, attachments, schedules and exhibits hereto, which are hereby incorporated into these Terms and Conditions by this reference, are the entire agreement between the parties, and supersede all previous communications, representations or agreements, either written or oral, between the parties hereto concerning the subject matter hereof. Any changes to these Terms and Conditions (including any change to any of the attachments hereto) must be in writing to be effective and signed by each party's respective Designated Representatives.

(f) Counterparts. These Terms and Conditions may be executed in counterparts. Each counterpart is an original, and all counterparts together shall constitute one instrument.

(g) Severability. If any portion of these Terms and Conditions is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from these Terms and Conditions, and the remaining portions shall remain in full force.

(h) Assignment. The Buyer may assign all or part of these Terms and Conditions at any time. Seller may not assign or further subcontract any portion of the Work or its obligations hereunder or assign, transfer, convey or otherwise dispose of these Terms and Conditions or its right, title or interest in or to these Terms and Conditions or any part hereof without the prior written consent of the Buyer and any sureties under bonds or guaranties made in favor of the Buyer concerning the Work. The Buyer's consent to an assignment shall not release Seller from (1) any obligation otherwise imposed upon Seller by these Terms and Conditions, (2) the consequences of a breach of these Terms and Conditions by Seller's assignee or Seller, or (3) the failure of Seller's assignee or Seller to satisfy all of the warranties made by Seller in these Terms and Conditions. If Seller is a corporation, a change in ship of twenty-five percent (25%) or more of its stock, whether in one or more transactions, shall constitute an assignment of the Work. Seller acknowledges the reasonableness of this provision due to the personal service nature of these Terms and Conditions.

(i) Title to Improvements. Title to all materials, fixtures, Plans and Specifications and Shop Drawings shall be deemed vested in the Buyer when and as the same shall have been installed, affixed permanently to the realty or otherwise delivered to the Buyer. The Buyer shall not be liable for loss or damage to any material or fixtures as to which title is not then vested in the Buyer at the time of such loss or damage whether such material or fixtures are on the project site, in transit, under the control of the Buyer, or otherwise.

(j) Interpretation and Governing Law. These Terms and Conditions shall be construed fairly and as though prepared by both parties. These Terms and Conditions shall be governed by the law of the State where the project is located.

(k) Time. Time is of the essence of these Terms and Conditions and each provision where time is a factor.

(l) Independent Seller. Seller is an independent Seller and shall, at its sole expense, and without increase in the Contract Price, comply with all Laws and pay all manufacturers' sales, use and processing taxes and all federal, state and local taxes.

(m) Survival of Obligations. Any indemnity, guaranty, representation or warranty given by Seller to the Buyer in these Terms and Conditions shall survive the expiration or termination of these Terms and Conditions.

(n) No Third-Party Beneficiaries. These Terms and Conditions is between the Buyer and Seller. Except as expressly set forth herein, no other person or entity is intended to be, nor shall be, benefited by the terms hereof, whether as a third-party beneficiary or otherwise.