



**EXHIBIT "R"**  
**ALCAN ROLLED PRODUCTS – RAVENSWOOD LLC**  
**GENERAL CONDITIONS FOR PROFESSIONAL SERVICE CONTRACTS**

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**1. NOTICE OF OBJECTION TO DIFFERING TERMS**

Owner hereby gives notice of its objection to any different or additional terms and conditions except for any such terms and conditions as may be expressly accepted by it in writing.

**2. DEFINITIONS**

- A. Unless the contrary appears:
1. "Contract" means the Professional Service Contract, as amended, and the documents incorporated therein by reference.
  2. "Owner" includes its successors and assigns.

3. "Engineer" means the person, firm, or company that has undertaken to carry out the Work and includes the Engineer's permitted assigns, successors, and legal representatives. The term "Engineer" shall also be included within the term "Contractor" as such term is used in Exhibit "S."
  4. "Work" and "the Work" mean professional services and all things to be provided, supplied, made or done by Engineer pursuant to the Contract.
  5. "As directed," "as required," "acceptable," "satisfactory," and similar terms shall mean by or to the Owner.
- B. Where the Contract so permits, the singular shall include the plural, and words importing persona shall include corporations and firms, and vice versa.
- C. Headings shall not modify or affect the meaning of this contract.

### **3. OWNER'S AND ENGINEER'S REPRESENTATIVES**

The Engineer shall assign a Representative who shall be authorized to receive direction from Owner and to act for Engineer in all matters. Owner will appoint a Representative who will act in a similar manner for Owner.

### **4. PROTECTION OF PROPRIETARY AND CONFIDENTIAL INFORMATION**

All information including plans, drawings, designs, calculations, specifications, reports, daily logs, data, and other material, prepared by Engineer or disclosed to Engineer by or on behalf of Owner in connection with the Work shall, as between the Engineer and Owner, become or remain, as the case may be, the property of Owner; and, except as authorized by Owner in writing, the information shall not be disclosed by Engineer to any other person, firm, or corporation, or used by Engineer for any purpose other than the Work furnished hereunder. All such material shall be delivered to Owner by Engineer upon completion of the Work or upon request, whichever is sooner.

To implement the aforesaid obligations of Engineer as to prevention of unauthorized disclosure and/or use of information disclosed by or on behalf of Owner to Engineer, Engineer shall limit access to such information to its officers and employees directly concerned with performance by Engineer of Work called for under the Contract. Further, Engineer shall enter into, or shall have entered into, suitable written agreements with all said officers and employees having access to any of said information obligating said personnel to not use or disclose such information except as permitted by Owner in connection with performance by Engineer of Work called for under this Contract. In addition, Engineer shall notify in writing its officers and employees having access to any of said information as to the source and confidential nature thereof and the obligations of Engineer to Owner to restrain its officers and employees from making unauthorized disclosures or use of any said information. Engineer warrants that to the best of its knowledge, no information or material it discloses to Owner in connection with the performance of the Work contemplated by this Contract involves any subject matter which is a trade secret of any third party and that Engineer is not aware of any adverse claim, interest, or other fact or right, including patent infringement or misappropriation of trade secrets, which would in any way affect its ability to enter into this Contract and the right of owner to utilize any information and developments flowing therefrom.

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

## **5. PATENTS, TRADE SECRETS, COPYRIGHTS, AND TRADEMARKS**

- A. Engineer shall indemnify, defend, and hold Owner (including its successors in interest) harmless from any action against Owner based on any claim that the Work or any part thereof, including any process, system, method, or arrangement used by Engineer, furnished by Engineer pursuant to this Contract, or the operation or use of the Work or any part thereof by Owner, constitutes infringement of any United States Patent, now or hereafter issued, or violates any other proprietary interest (including copyrights, trademarks, and trade secrets). Owner agrees to promptly notify Engineer in writing of any such claim, and to provide Engineer with information and assistance (at Engineer's expense) for defense of same.
- B. In the event Owner is enjoined from the operation or use of the facilities when constructed or any part thereof in connection with any said action, Engineer shall (at its expense) make all reasonable effort to procure for Owner the right to operate or use the Plant if Engineer cannot so procure the aforesaid right within a reasonable time. Engineer shall then promptly (at Engineer's expense); (i) modify the facilities so as to avoid infringement of any patent or other proprietary interest or (ii) replace said facilities with Work which does not infringe or violate said proprietary interest.
- C. In the event any such action is based on infringement or violation of a proprietary interest, (i) relating solely to specifications and drawings furnished by Owner or solely to a particular process or product of a particular manufacturer specified by Owner and (ii) such specifications, drawings, processes, or products are something other than that which has been offered or recommended by Engineer to Owner or to other parties, then the provisions of sections A and B of this Article shall not be applicable.
- D. This Article shall constitute the sole agreement between the parties relating to reliability of infringement or violation of proprietary rights, unless expressly revised in writing on the face of the Contract.

## **6. COMPLIANCE WITH LAW**

Contractor shall comply with all applicable federal, state, and local laws, regulations and orders, including without limitation those pertaining to environmental, health and safety matters. Contractors shall also comply with all safety rules and regulations prescribed by Owner for any of its plants in which the Work is to be performed.

## **7. NOTICES**

Notices hereunder shall be delivered in writing to Engineer's Representative or by telegram, cablegram, or registered mail addressed to Engineer at the address shown in the Contract. Notice given by Engineer to Owner shall be in duplicate to Owner at the address shown in the Contract or may be served by personal delivery to Owner's

Representative or by telegram, cablegram, or registered mail. Any such notice shall be effective upon delivery or (7) days after being placed in the ordinary course of the mail, whichever occurs first.

## **8. RECORDS**

Engineer shall keep a complete set of accounts and records on a cost accounting basis, conforming to accepted accounting principles and showing all expenditures under this Contract. If this Contract provides for compensation on a cost basis, or if Engineer claims compensation from Owner under the "Claims," "Changes," or "Termination For Convenience" Articles of these General Conditions, or otherwise, as a condition precedent to any obligation of Owner for payment thereof, Owner shall be afforded the right to inspect, audit, and verify such accounts and records.

## **9. OFFICE SPACE**

Engineer shall furnish office space in its offices for visiting Representatives of Owner.

## **10. APPROVAL**

All engineering Work shall be subject to the Owner's approval after such Work has been checked and approved by the Engineer. Unless otherwise agreed to by Owner, the Engineer shall sign all drawings and specifications checked and approved prior to submitting for Owner's review. Engineer shall submit to Owner for Owner's approval all design engineering data, flow diagrams, piping and instrument diagrams, general arrangement drawings and detail drawings. Unless otherwise stated, within ten (10) days after Owner has received general arrangement and piping diagrams and within ten (10) days after Owner has received other detail drawings, Owner will approve or note corrections to be made upon such diagrams and drawings and deposit one (1) copy each in the mail to return to Engineer. Engineer shall, promptly upon receipt of such drawings, proceed with the Work that has been approved by Owner. If corrections are required, Engineer shall resubmit the required drawing and other pertinent data with corrections made. Unless otherwise agreed to by Owner, all construction drawings used for bid purposes shall be stamped "Approved for Construction" and signed by the Engineer prior to requesting bids. Notwithstanding Owner's approval of drawings and other pertinent data, Engineer shall be and remain fully responsible for the adequacy, accuracy, and completeness of such drawings and data and Work performed pursuant to such drawings and data and Engineer shall not be relieved from any duties or responsibilities under this Contract on account of such Owner approval.

## **11. ENGINEER'S PROFESSIONAL RESPONSIBILITY**

Engineer shall use its best efforts and professional ability to perform the Work and shall as a minimum, conform to the standard of care, skill, and diligence normally exercised by engineers and professionals, in good standing in the performance of services of a similar nature. Engineer further warrants that portions of the facilities designed in whole by Engineer and constructed in accordance with the Engineer's design shall operate and perform in accordance with the intent and requirements of this Contract.

## **12. PAYMENT**

- A. Within ten (10) days after the end of each month, Engineer shall furnish to Owner a detailed invoice of the man-hours expended for the value of Work done during the preceding month.
- B. Within sixty (60) days after receipt of such invoice. Owner shall remit to Engineer one hundred percent (100%) of the amount determined by Owner to be due to Engineer for such period.
- C. Owner's obligation to make any of the payments required hereunder shall also be subject to the right of Owner to withhold an amount of any claims Owner may have against Engineer under or in connection with this Contract or any other contract between the parties hereto.
- D. Any overpayment by Owner to Engineer shall be deemed to be a mistake of fact and promptly repaid to Owner.

### **13. CHANGES**

Engineer shall not be entitled to any compensation for any changes or additions in the scope of the Work to be performed unless such changes or additions have been authorized by Owner in writing. Owner may, by written notice, make changes, additions or deletions within the general scope of the Work to be performed and Engineer shall promptly comply with all such written notices.

### **14. DELAYS**

In the event of delay to Engineer resulting from acts of the Owner or from delay or failure of Owner in furnishing any items required to be furnished to Engineer pursuant to this Contract or if either party is delayed in its performance of obligations hereunder due to any cause not reasonably within such party's Control, such as acts of God, strikes or compliance with labor agreements; fire; and, except as otherwise expressly provided elsewhere in this Contract, for no other cause or causes. Engineer shall be entitled to an extension of time by such period as may be both reasonable and necessary due to such occurrence, provided that neither party shall be entitled to any such extension unless he notifies the other in writing within five (5) working days of the commencement of any such cause or occurrence and its probable duration.

### **15. TERMINATION FOR CONVENIENCE**

- A. Owner may for its convenience, terminate the Work in whole or in part at any time by written or telegraphic notice to Engineer stating the extent and effective date of such termination. Upon receipt of such notice, Engineer shall (i) stop all Work, except as may be necessary to complete portions of the Work not terminated; (ii) take any necessary action to protect property in Engineer's possession in which Owner has or may acquire an interest; (iii) complete performance of the unterminated portion of the Work; and (iv) take any other action toward termination of the Work which Owner may direct.

- B. In the event of termination under this Article, Owner will pay to Engineer, subject to the limitation hereinafter set forth, the sum of (i) the payroll cost, (including taxes, insurance, and fringe benefits); (ii) eighty-five percent (85%) of the payroll cost; and (iii) any other direct, reasonable, and necessary costs actually incurred by Engineer. Deductions will be made by Owner for amounts previously paid to Engineer and for any amounts which may be due Owner or which Owner may offset or withhold by the terms hereof. Any payment to Engineer under this Article shall be made in accordance with the provisions of the "Payment" Article.
- C. After receipt of a notice of termination, Engineer shall submit to Owner its written termination claim in the form and with the certification which Owner may prescribe. Such claim shall be submitted promptly, but in no event more than ninety (90) days after the effective date of termination.

## **16. FAILURE BY ENGINEER**

Time is of the essence of this Contract, and Engineer shall perform and complete the Work in accordance with the Contract requirements.

- A. In the event Engineer fails to perform the Work, or fails to make the progress set forth in the Contract, or fails to pay any indebtedness when due, or fails to perform any of the other conditions or obligations assumed under this Contract, or becomes insolvent, or in the event of the institution of any voluntary or involuntary proceeding by or against Engineer in bankruptcy or insolvency, or in the event of the appointment of a receiver, trustee, or assignee for the benefit of creditors of Engineer, Owner shall have the right, if it so elects and without prejudice to any other rights it may have, to exercise all or any other of the following powers: (i) to suspend payment in whole or in part under the Contract until the default has been remedied; (ii) to take the Work remaining to be completed wholly or partly out of the hands of Engineer and to award such Work to others, all at Engineer's expense; and (iii) to have any defective Work redone in whole or in part, by Engineer, or, at Owner's option, by others, all at Engineer's expense.
- B. In the event Owner exercises its right under A(ii) or A(iii) above, Engineer shall not receive any further payment until the Work is completed. The actual expense of completion, including Owner's managerial and administrative expenses as attributable thereto, shall be certified by Owner and shall be binding on the parties. If such expense exceeds the unpaid balance of the Contract compensation, Engineer shall promptly pay the difference to Owner on demand.
- C. In addition to the rights provided above, Owner shall have and may exercise or enforce any other rights or remedies provided by law or equity for any default or breach by Engineer, and Engineer shall be liable for and shall pay all losses or damages suffered by Owner arising out of any such breach or default by Engineer in the performance of this Contract.

## **17. INDEMNITY**

Engineer agrees to protect, defend, indemnify, and hold harmless Owner, its agents, officers, employees, shareholders, representatives, insurers, parent, subsidiary and affiliated companies, contractors, and subcontractors, and all of their respective agents, officers, directors, insurers, contractors and subcontractors (collectively, for purpose of this Article, "Owner") from and against all claims, losses, costs (including but not limited to, reasonable attorneys' fees and court costs and other costs of suit), demands, damages, lawsuits, suits, judgments, penalties, civil penalties, liabilities, debts, expenses, and causes of action of whatever nature or character, whether known or unknown, whether predating this Contract or not, and whether arising out of contract, tort, strict liability, breach of warranty, products liability, misrepresentation, violation of applicable law, and/or any cause whatsoever, without limit and without regard to the cause or causes thereof, including without limitation claims due to bodily injury, alleged bodily injury, death, or loss of personal property (collectively referred to herein as "Claims"), which in any way arise out of or are related to Engineer's performance under this Contract, and which are asserted by or arise in favor of Engineer or any contractor or subcontractor or any of its or their agents, representatives, employees, invitees and/or their spouses or relatives), insurers, contractors and subcontractors, WHETHER OR NOT CAUSED BY THE SOLE, JOINT, COMPARATIVE, AND/OR CONCURRENT NEGLIGENCE, FAULT, OR STRICT LIABILITY OF OWNER. THIS CONTRACT IS INTENDED TO INDEMNIFY OWNER AGAINST THE CONSEQUENCES OF ITS OR THEIR SOLE NEGLIGENCE, FAULT, OR STRICT LIABILITY AND AGAINST THE CONSEQUENCES OF ITS OR THEIR OWN NEGLIGENCE, FAULT, OR STRICT LIABILITY OCCURRING JOINTLY, CONCURRENTLY, OR COMPARATIVELY WITH THE NEGLIGENCE, FAULT, OR STRICT LIABILITY OF CONTRACTOR OR ANY CONTRACTOR OR SUBCONTRACTOR OR ANY OF ITS OR THEIR AGENTS, REPRESENTATIVES, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS. It is the intent of the Owner and the Engineer hereby to allocate to Engineer the duty to purchase insurance for the benefit of all parties who are or may be affected by any goods, item or material utilized or to be utilized or service performed or to be performed under or in connection with this Contract all as set forth in Article 18 hereof.

In any and all Claims against Owner by any employee of Engineer, contractor, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, the indemnification obligation of Contractor under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Engineer or any contractor or subcontractor under workers' compensation acts, disability benefits acts or other employee benefit acts.

Bodily Injury Defined - "Bodily Injury" as used in this Article shall be construed to include, but not limited to, any injury, physical pain, illness, sickness, disease, or impairment of physical condition of the body as well as any personal injury including but not limited to any invasion of personal rights such as libel or slander, invasion of privacy, tortious interference with a third party contract, or mental suffering.

If it is judicially determined that any of the indemnity obligations contained herein are invalid, illegal or unenforceable in any respect, said obligations shall automatically be amended to conform to the maximum monetary limits and other provisions in the applicable law for so long as that law is in effect.

**18. INSURANCE:**

A. During the term of the Contract and until final acceptance by Owner of all work to be performed hereunder, Engineer shall carry the minimum insurance described below in this Section a, Paragraphs (i), (ii), and (iii) of this Article 18.

(i) Workers' Compensation Insurance and Employer's Liability Insurance including occupational disease in accordance with the laws of States or Provinces where the work is to be performed.

(A) Workers' Compensation Insurance shall have the minimum limits as required by statute for the State or Province where the work will be performed.

(B) Employer's Liability Insurance shall have the following minimum limits:

- (B.1) Bodily injury by accident -- \$2,000,000 each accident;
- (B.2) Bodily injury by disease -- \$2,000,000 each employee;
- (B.3) Bodily injury by disease -- \$2,000,000 policy limit.

If the performance of this Contract requires the use of watercraft or is performed over water, Engineer shall also provide coverage for liability under U.S. Longshoremen's and Harbor Workers' Compensation Act and liability for admiralty benefits and damage under the Jones act.

(ii) Commercial General Liability Insurance, including contractual liability, products, completed operations (completed operations coverage shall be extended for a period of two years following final acceptance of the work by Owner) and personal injury liability coverage with limits of not less than \$2,000,000 combined single limits each occurrence.

(iii) Professional Liability Insurance in an amount not less than \$2,000,000 annual aggregate.

(iv) Automobile Liability Insurance, on each and every unit of automobile equipment, whether owned, non-owned, or hired, operated, or used by Engineer and/or its subcontractors in the performance of this Contract, covering injury, including death, and property damage in an amount not less than \$2,000,000 per accident.

(v) Nothing contained in this Section shall be construed as limiting the liability assumed by Engineer under Article 17 above.

B. Engineer "shall abide by the following additional insurance requirements

(i) Add to Policies as Additional Insured: All insurance purchased and maintained by Engineer in compliance with Section A, Paragraphs (ii) and (iii) of this Article 18, as well as any excess and/or umbrella insurance that Engineer purchases and maintains in regard thereto, shall name Owner, its directors, officers, agents, representatives, and employees as additional insureds.

(ii) Waiver of Subrogation: All insurance policies purchased and maintained by Engineer in compliance with Section A, Paragraphs (ii) and (iii), of this Article 18, as well as any excess and/or umbrella insurance policies that Engineer purchases and maintains in regard thereto, shall be endorsed to provide that underwriters and insurance companies of Engineer shall not have any right of subrogation against Owner or any of its directors, officers, agents, employees, invitees, servants, insurers, underwriters, and such other parties as Owner may designate.

(iii) Primary Insurance: All insurance policies purchased and maintained by Engineer in compliance with Section A, of this Article 18, as well as any excess and/or umbrella insurance policies that Engineer purchases and maintains in regard thereto, shall be endorsed to provide that the coverage provided by Engineer's insurance shall always be primary coverage, and noncontributing as respects any insurance maintained by Owner.

(iv) Notice of Cancellation: All insurance policies purchased and maintained by Engineer in compliance with Section A of this Article 18, as well as any excess and/or umbrella insurance policies that Engineer purchases and maintains in regard thereto, shall be endorsed to provide that thirty (30) days' prior written notice shall be given Owner in the event of cancellation or material change in the policies.

(v) The general liability insurance policy purchased and maintained by Engineer in compliance with Section A, Paragraph (ii) of this Article 18, as well as any excess and/or umbrella insurance policies that Engineer purchases and maintains for this purpose shall be endorsed to provide coverage for liability assumed by the Engineer under all written contracts between Owner and Engineer.

(vi) The Engineer and its subcontractors at all times shall waive any right of recovery against Owner, or any of its directors, officers, agents, employees, invitees, servants, insurers, underwriters, and such other parties as they may designate for loss or damage covered by insurance of the types purchased and maintained by Engineer in compliance with Section A, Paragraph (ii) and (iii) of this Article 18, as well as any excess and/or umbrella insurance policies that Engineer purchases and maintains in regard thereto.

(vii) With respect to all the insurance described above in Section A of this Article 18, Engineer shall furnish Owner, prior to the commencement of any operations under this Contract, with a certificate or certificates, properly executed by the

insurance carrier, showing all such insurance to be in force. Said certificates shall include specific reference to compliance with the above Section B, Paragraphs (i), (ii), (iii), (iv) and (v) of this Article 18, shall include the following statement, General liability and any excess and/or umbrella liability insurance certified hereunder includes coverage for liability assumed by the Insured under all written contracts between Owner and the Insured".

#### **19. CLAIMS**

Without in any way enlarging or limiting the other provisions of the Contract, and unless otherwise specifically prescribed in this Contract, any claim of Engineer for extension of time, extra compensation, or damages whether under this Contract or otherwise asserted against Owner shall be conclusively deemed to have been waived by Engineer until a timely claim therefore is filed pursuant to the applicable provisions of this Contract, or if none applicable, unless such claim is set forth in detail in writing and filed with Owner within fifteen ( 15) days after the facts upon which such claim is based, become known or should have become known to Engineer.

#### **20. INDEPENDENT CONTRACTOR**

Engineer shall perform the Work hereunder as an independent contractor and not as an agent or employee of Owner.

#### **21. APPLICABLE CONDITIONS WHEN THE WORK IS PERFORMED ON OWNER'S PREMISES**

In the event that any portion of the Work is to be performed on the Owner's premises, Engineer shall conform to all safety, security, fire protection, and first aid requirements set forth in Exhibit "S" to this Contract.

#### **22. NON-WAIVER**

No waiver of any provision of this Contract shall constitute a waiver or any other provision or the same provision in any other instance, and waiver or a breach or any provision or this Contract shall not constitute a waiver of any other such breach or breach of any other provision of this Contract.

#### **23. ENTIRE CONTRACT**

This Contract contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, proposals, notices of award, agreements, and understandings, whether written or oral. In the event any specification or exhibit forming a part of this Contract contains terms or conditions inconsistent with the Contract provisions, these Contract provisions shall control. No amendment, variance, or change in the provisions of this Contract shall be effective unless made in writing and signed by the authorized representatives or the parties hereto.

#### **24. APPLICABLE LAW**

This Contract shall be governed by and construed in accordance with the law of West Virginia.

## **25. INVENTIONS**

Any and all inventions, discoveries, and/or improvements conceived or first actually reduced to practice or developed by Engineer in the course of or under this Contract (a) shall be promptly and fully communicated to Owner. (b) shall be the sole and exclusive property of owner, or its nominee, and (c) shall be treated in confidence by Engineer and not be disclosed by Engineer to any other person, firm, or corporation or used by Engineer in any manner whatsoever, except in connection with the Work hereunder at Owner's request. Engineer shall execute any and all instruments or documents which Owner may deem necessary to assign and convey to Owner, or its successors or assigns the sole and exclusive right, title and interest in and to any such inventions, discoveries, and improvements and patents covering same together with any and all instruments or documents deemed necessary by Owner in order to apply for and obtain patents of the United States and/or foreign countries therefore. The obligation to execute any and all such instruments or documents shall continue after the termination or expiration of this Contract. All expenses of applying for or obtaining patents, when authorized by Owner, shall be borne by Owner.

## **26. WARRANTIES**

Engineer warrants that it will perform the Work in accordance with the standard or care and diligence normally practiced by recognized firms normally performing services of a similar nature under similar circumstances. In the event the Work does not meet the above described standards, Engineer will perform such Work for Owner at no charge to Owner, and be responsible for indemnifying the Owner in respect of any and all such substandard Work as set forth elsewhere in this Contract.

## **27. DISPOSAL OF CONTAMINATED MATERIAL**

To the extent that the Work involves the disposal of contaminated material, Engineer shall undertake on behalf of Owner or arrange for the handling, removal, treatment, storage, transportation and disposal of all material or constituents found or identified at the site as being regulated or hazardous substances, hazardous waste or toxic materials under federal or State of West Virginia environmental laws, rules or regulations. By way of clarification and emphasis only and not by way of limitation, Owner and Engineer agree that the provisions of Section 17 of this Contract (relating to Engineer indemnifying, defending and saving harmless Owner) are and shall be applicable to Engineer's failure to comply with any environmental laws, rules or regulations, state, federal or local, including without limitation disposal of contaminated material as contemplated by this Section 27, and that all of Engineer's responsibilities with regard to indemnification contained in this Contract shall continue without limitation as to time and shall survive the extinguishment of any other rights, duties and responsibilities contained in this Contract.