



**SERVICE CONTRACT
GENERAL CONDITIONS**

- 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. REPRESENTATIONS:** Contractor understands that he must rely upon his own examination and investigation as to the scope and location of the Work to be performed and all local and general conditions which may affect performance of the Work. This Contract constitutes the entire agreement between parties and supersedes all prior negotiations and proposals, whether written or oral.
- 3. ITEMS CONTRACTOR WILL SUPPLY:** Contractor shall supply all Labor, tools, implements, equipment, machinery, and materials needed for the Work, except those items, if any, specified to be supplied by Owner.
- 4. PERFORMANCE:**

 - a. Contractor shall perform the Work in the best and most workmanlike manner, using qualified, efficient, and careful workers, and in strict conformity with generally accepted professional practices, unless a higher standard is undertaken pursuant to this Contract.
 - b. Contractor agrees that time shall be of the essence and understands that damages to the Owner may result from any delay in the completion of the Work or portions thereof.
 - c. Contractor shall take all reasonable precautions to perform the Work in such a manner as to not interfere with Owner's operations or with the operations of other contractors working on Owner's premises.
- 5. CHANGES:** Owner may make changes within the general scope of the Work by written notification to Contractor. Contractor shall promptly comply with such written direction and within ten (10) days after receipt of such direction shall give Owner its written proposal for increase or decrease in compensation and time for performance. Upon the basis of the Contractor's proposal and other relevant information, Owner will determine the amount of increase or decrease in the Contract price and time for performance, if any, necessary to reasonably compensate Contractor for such change.
- 6. EXCUSABLE DELAYS:** If the Work is delayed by any cause beyond the reasonable control and without the fault or neglect of the Contractor, including, but not limited to, acts of God, strikes, lockouts, fire, or shortage of materials or equipment, Contractor shall give Owner prompt notice of such delay and the estimated duration thereof, and the completion date shall be extended by the time reasonably necessary due to the delay, provided, that if Contractor is delayed by lack of materials or equipment, Owner may supply such materials or equipment, and

the cost of such materials or equipment shall be deducted from the Contract price and no extension of time shall be granted.

7. PAYMENT: Unless otherwise provided in this Contract, payment in full shall be made within sixty (60) days after completion and acceptance of the Work by Owner. As a condition precedent to final payment Contract may be required to execute a release satisfactory to Owner discharging Owner, its officers, agents, and employees from all liability, obligation and claims arising out of this Contract.

8. Indemnification: To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold harmless Owner, and Owner's agents, officers, directors, shareholders, representatives, insurers, parent, subsidiary and affiliated companies, contractors, and subcontractors, and all of their respective agents, officers, directors, employees, shareholders, insurers, contractors, and subcontractors from and against any and all claims, losses, liability, and damages (including but not limited to attorney's fees, litigation expenses, and costs) arising out of or related to the performance or failure to perform the Work under this Contract or arising out of or related to the acts, errors, or omissions of the Contractor and Contractor's officers, directors, partners, agents, consultants, employees, and subcontractors, whether or not caused by the joint, comparative, and/or concurrent negligence, fault, or strict liability of Owner. The Contractor's duty to indemnify Owner includes, but is not limited to, claims against Owner for negligent and/or reckless hiring of Contractor, claims for failure to supervise, direct, and/or control the work of Contractor, and/or claims related to any condition of the worksite in the area of the Work. It is the intent of Owner and Contractor hereby to allocate to Contractor the duty to purchase insurance for the benefit of all parties who are or may be affected by the Work or this Contract, all as set forth in greater detail in Article 9 of this Contract.

In any and all Claims against Owner by any employee of Contractor, any 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 Contractors or any contractor or subcontractor under workers' compensation laws, disability benefits laws, or other employee benefit laws.

Owner shall not be responsible or liable for any Losses resulting from the use, misuse, or failure of any tools and/or equipment used by Contractor or Contractor's agents, representatives, employees, invitees (and/or their spouses or relatives), insurers, contractors, and subcontractors, even if such tools and/or equipment are furnished, rented, or loaned to Contractor or such other persons or entities by Owner. Contractor accepts any such tools and/or equipment in an "as is, where is" condition. Contractor accepts full responsibility for, and shall indemnify, defend and hold harmless Owner against any and all Losses resulting from the use, misuse or failure of such tools and/or equipment.

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.

The covenants of indemnity contained in this Agreement shall survive termination or expiration of this Agreement.

9. INSURANCE:

a. During the term of the Contract and until final acceptance by Owner of all work to be performed hereunder, Contractor shall carry the minimum insurance described below in this Section a, paragraphs (i), (ii), and (iii) of this Article 9.

(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, Contractor 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) Automobile Liability Insurance, on each and every unit of automobile equipment, whether owned, non-owned, or hired, operated, or used by Contractor 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.

(iv) Nothing contained in this Section shall be construed as limiting the liability assumed by Contractor under Article 8 above.

b. Contractor shall abide by the following additional insurance requirements:

(i) Add to Policies as Additional Insured: All insurance purchased and maintained by Contractor in compliance with Section a. Paragraphs (ii) and (iii) of this Article 9, as well as any excess and/or umbrella insurance that Contractor 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 Contractor in compliance with Section a. Paragraphs (ii) and (iii) of this Article 9, as well as any excess and/or umbrella insurance policies that Contractor purchases and maintains in regard thereto, shall be endorsed to provide that underwriters and insurance companies of Contractor 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.

c. Primary Insurance: All insurance policies purchased and maintained by Contractor in compliance with Section a of this Article 9, as well as any excess and/or umbrella insurance policies that Contractor purchases and maintains in regard thereto, shall be endorsed to provide that the coverage provided by Contractor's insurance shall always be primary coverage, and noncontributing as respects any insurance maintained by Owner.

d. Notice of Cancellation: All insurance policies purchased and maintained by Contractor in compliance with Section a of this Article 9, as well as any excess and/or umbrella insurance policies that Contractor 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.

e. The general liability insurance policy purchased and maintained by Contractor in compliance with Section a, Paragraph (ii) of this Article 9, as well as any excess and/or umbrella insurance policies that Contractor purchases and maintains for this purpose shall be endorsed to provide coverage for liability assumed by the Contractor under all written contracts between Owner and Contractor.

f. The Contractor 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 Contractor in compliance with Section a, Paragraph (ii) and (iii) of this Article 9, as well as any excess and/or umbrella insurance policies that Contractor purchases and maintains in regard thereto.

g. With respect to all the insurance described above in Section a of this Article 9, Contractor 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 certificate" shall including specific reference to compliance with the above Section b, Paragraphs (i), (ii), (iii), (iv) and (vi) of this Article 9, 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 contract between Owner and the Insured".

10. SUSPENSION: Owner may, for its convenience, suspend the Work in whole or in part at any time by written or telegraphic notice to the Contractor stating the extent and effective date of such suspension, whereupon Contractor shall suspend the Work to the extent specified. During the period of suspension, Contractor shall protect and care for all Work, materials, and equipment on hand. Contractor shall also give Owner copies of all outstanding orders for materials, equipment, and services and shall take any action on such orders as Owner may direct if the cost of the Work, including the cost of additional Work made necessary by the suspension, is increased or decreased by such suspension, the Contract price shall be adjusted in accordance with the provisions of the “Changes” Article.

11. TERMINATION FOR CONVENIENCE: Owner may, for its convenience, terminate the Work in whole or in part at any time by written or telegraphic notice to Contractor, which shall state the extent and effective date of such termination. Upon the effective date thereof, Contractor shall (a) stop all Work and place no further orders or subcontracts, (b) terminate work orders and subcontracts outstanding, (c) take any necessary action to protect property in the Contractor’s possession in which Owner has or may acquire an interest, (d) take any other action which Owner may direct in the event of a termination under this section. Owner shall pay to Contractor the sum of (a) the costs incurred by Contractor in connection with the Work prior to such termination, (b) six percent (6%) of the foregoing costs in lieu of profits, and (c) such other costs as Owner may approve, including termination charges of subcontractors and vendors, less any amounts previously paid to Contractor, provided, however, that the total amount to be paid to Contractor under this section shall not exceed the total Contract price. Any payment due to Contractor under this section shall be made in accordance with the provisions of the “Payment” Article hereof.

12. TERMINATION FOR DEFAULT: Notwithstanding the provisions of the “Termination for Convenience” Article hereof, Owner may terminate this Contract (a) if Contractor is in default or (b) in the event of the institution of any voluntary or involuntary proceedings by or against Contractor in bankruptcy or insolvency or in the event of the appointment of a receiver, trustee, or assignee for the benefit of creditors of Contractor. Owner’s right under this Article is not exclusive and is in addition to any other right or remedy provided by law or this Contract.

13. UNION AGREEMENTS: Operations at Owner’s plants are governed by agreements with certain labor unions, and copies of such agreements will be made available to Contractor by Owner at Contractor’s request. It is expected that the Contractor shall take such action as necessary consistent with applicable Federal and State legislation as will be compatible with such agreements and as will avoid disrupting relations between Owner and its employees.

14. PERMITS, LICENSES, AND FEES: Contractor shall obtain all licenses and permits and pay all fees required by municipal or other authorities in connection with the performance of the Work; provided however, that this obligation shall not extend to any license or permit which Owner may be required by law to obtain. Contractor shall also furnish any bonds or cash or other deposits required in the performance of the Work.

- 15. LIENS:** Contractor shall immediately discharge or obtain releases for all liens, claims, stop notices or attachments which may be filed in connection with the Work. Owner may withhold any monies due Contractor until such encumbrances are discharged or released.
- 16. COMPLIANCE WITH LAW AND SAFETY RULES:** Contractor shall comply with all applicable federal, state, and local laws, regulations, rules 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.
- 17. NOTICES:** All notices under this Contract shall be given by telegram or first class mail addressed to the respective party at the address indicated on the face of the contract hereof. The address of either party may be changed at any time by written notice of such change to the other party.
- 18. PATENTS, TRADE SECRETS, COPYRIGHTS, AND TRADE MARKS:** Contractor shall indemnify, defend, and hold Owner (including its successors in interest) harmless against any and all claims (including attorneys fees and other expenses of suits) for infringement or use of any patent, now or hereafter issued, or violation of any other proprietary interest (including without limitation trade secrets, copyrights and trademarks) in connection with the Work to be performed hereunder and the use by Owner of any materials, parts, tools, equipment, appliances, or products of the Contract fabricated or furnished by Contractor.
- 19. INDEPENDENT CONTRACTOR:** Contractor shall perform the Work as an independent contractor and not as Owner's agent or employee.
- 20. ASSIGNMENT OF CONTRACT:** Contractor may not assign the Work in whole or in part without Owner's prior written consent.
- 21. NON-WAIVER:** No waiver of a breach of any provision of this Contract shall constitute a waiver of any other breach of such provision or of any other provision.
- 22. NO DISCRIMINATION:** The Contractor agrees that it will not discriminate against any employees or applicants for employment because of race, creed, color, sex or national origin.
- 23. APPLICABLE LAW:** This Contract shall be governed by and construed in accordance with the law of West Virginia.
- 24. CAMERAS-PHOTOGRAPHS:** In the absence of the prior express written permission from an authorized representative of Owner, Contractor shall not bring any cameras onto the premises of owner and shall not take, have taken, or otherwise acquire photographs of any kind, including the Work, at various stages of progress or upon completion thereof, or photographs of any plans, drawings, specifications, or other subject matter relating to said Work. In the event that Owner does authorize Contractor to take, have taken, or otherwise obtain any such photographs, the receipt of and use thereof will be subject to such conditions as Owner deems

appropriate at the time. The aforesaid restrictions concerning photographs shall also apply in the event any of the Work is to be performed off Owner's premises.