

ARCELORMITTAL DOFASCO G.P.**HAMILTON, ONTARIO**SPECIFICATION NO. O-OB COVERING General Conditions - Construction

DIVISION:

DATE:

DEPARTMENT:

ENG. REF.:

UNIT:

PREPARED BY:

SUMMARY:

A specification setting out commercial terms for construction contracts.

REVISIONS

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ARTICLE I DEFINITIONS

1.1 **Words Used in Contract** - In and for the purposes of the Contract the following terms shall have the following meanings:

“accepted” or **“approved”** or **“to the satisfaction of”** shall mean, unless the context otherwise requires, that the material, Work or other word so modified shall be acceptable or satisfactory to, or be approved by, the Authorized Representative;

"Adjusted Cost" has the meaning ascribed to it in section 10.1;

“Authorized Representative” shall mean the Person or Persons so designated in the Contract Documents, or such Person(s) as Dofasco may designate from time to time to perform the functions of the Authorized Representative under the Contract Documents, and shall mean, with respect to any particular provision of these General Conditions, the Authorized Representative so designated with respect to such provision;

“Construction Plan” has the meaning given to it in section 3.32.1 ;

"Completion Certificate" shall mean a completion certificate in the form prescribed by Dofasco from time to time, which shall be issued to Contractor in blank at time of Award and which shall be completed by Contractor and submitted to Dofasco to confirm final completion of the Work;

"Contract" shall mean the agreement resulting from the Contract Documents;

"Contract Documents" shall mean the Invitation to Bid and related documents (including Contractor's Bid Response, Dofasco's Instructions to Bidders and Bid Form as filled out by the Contractor) which resulted in the issuing of the Dofasco Purchase Order, the Dofasco Purchase Order, the General Conditions, any Additional General Conditions, Dofasco's standard technical specifications and applicable specific technical specifications, the Contractor's work permit, any other document referred to or incorporated by reference in the Dofasco Purchase Order, the Dofasco Third Party Employee Health, Safety and Environment Handbook, and any and all other drawings, samples, models, specifications, supplemental instructions, blanket order releases, change orders, Purchase Order Amendments, supplemental instructions and documents which the Contractor and the Authorized Representative or the Purchasing Representative as the case may be, agree shall be Contract Documents or which become the property of Dofasco pursuant to section 2.5 (but shall not include any of Contractor's standard forms or the conditions thereon); and shall include all amendments thereto incorporated before or after the issuance of the Dofasco Purchase Order which are agreed upon in writing between the Authorized Representative and Contractor pursuant to the provisions of such documents, including the General Conditions;

"Contract Price" shall mean the aggregate of all amounts payable to Contractor in accordance with the Contract Documents and ARTICLE X;

"Contractor" shall mean the Person to whom the Dofasco Purchase Order is issued;

"Contractor's Bid" shall mean Contractor's written quotation or proposal for the Work as accepted by the Purchasing Representative(s), such acceptance having been evidenced by Award as defined in the Contract Documents;

"Date of Final Completion" shall mean the date specified in the Completion Certificate executed by the Authorized Representative as being the date of final completion of the Work;

"Dofasco" shall mean ArcelorMittal Dofasco G.P.;

"Dofasco Purchase Order" shall mean (i) the purchase order issued by Dofasco pursuant to which the Work is being performed, as the same may be amended from time to time pursuant to the provisions hereof, and/or (ii) the agreement entered into between Dofasco and Contractor pursuant to which the Work is being performed, as the same may be amended from time to time pursuant to the provisions hereof;

"Electronic Timesheets" means an electronic timesheet generated by an electronic commerce application created and maintained by Dofasco, for the creation and approval of daily Contractor/Supplier timesheets.

"Environmental Act" means the *Environmental Protection Act* (Ontario), including the regulations thereto, as amended or re-enacted from time to time, and any successor legislation;

"Estimated Cost" has the meaning ascribed to it in section 10.1;

"Fee" has the meaning ascribed to it in section 10.1;

"Fixed Fee" has the meaning ascribed to it in section 10.1;

"General Conditions" means this Specification O-OB, as the same is in effect on the date of the Invitation to Bid which resulted in the Contract (unless other or amended general conditions are expressly agreed in writing between Dofasco (through the Authorized Representative) and Contractor);

"including" or **"include"** or **"includes"** when used herein, shall mean "including without limitation" and shall not be construed to limit any general statement which it follows to the specific or similar items or matters immediately following it;

"Off-Site Work" shall mean any Work performed at a location other than Dofasco's premises, including, without limitation, preparatory Work performed off-site by Contractor or Subcontractor;

"Parties" means Dofasco and Contractor, collectively, and **"Party"** means any one of them;

"Percentage Fee" has the meaning ascribed to it in section 10.1;

"Person" shall include individuals, trusts or unincorporated organizations, firms, partnerships, joint ventures, corporations, the Crown or any agency or instrumentality thereof, or any other entity recognized by law;

"Plant" shall mean the steel plant operated by Dofasco at Hamilton, Ontario;

"Property" shall mean all land, building and fixtures owned or leased by Dofasco, at Hamilton, Ontario;

"Project" shall mean the Dofasco undertaking of which the Work may be the whole or a part;

"Purchasing Representative" shall mean the Person or persons so designated in the Contract Documents, or other such Person(s) as Dofasco may designate from time to time to perform the functions of the Purchasing Representative under the Contract Documents and who is and shall be the only Dofasco representative who has authority to deal with commercial issues relating to the Contract or the Work;

"Rate" shall mean the then current approved rate applicable to the Work to be performed;

“Rates Engine” shall mean the electronic commerce application through which Contractor submits proposed Rates to Dofasco and through which Dofasco either accepts or rejects such proposed Rates;

“Regulated Substances” shall mean those biological, chemical or physical agents or combinations thereof which are defined as “designated substances”, “hazardous materials” or “hazardous physical agents” in the Safety Act (including the biological and chemical agents listed in R.R.O. 1990, Regulation 833 Amended to O. Reg. 177/05, as the same may be amended, restated or superseded from time to time), the Environmental Act and the *Canadian Environmental Protection Act, 1999*, including the regulations thereto, as amended or re-enacted from time to time, and any successor legislation;

"Reimbursable Costs" has the meaning ascribed in 10.1;

"Safety Act" shall mean the *Occupational Health and Safety Act* (Ontario), including the regulations thereto, as amended or re-enacted from time to time, and any successor legislation;

“Schedule” shall mean the scheduled timing for performance of various portions of the Work as set out in the Contract Documents;

"Scheduled Completion Date" shall mean the date, if any, stated on the Contract Documents for final completion of the Work;

"Site" shall mean the location on the Property which is designated as the site of the Work in the Contract Documents;

"Specification O-OC" shall mean Dofasco's Specification O-OC governing new equipment supply, as the same is in effect on the date of the Invitation to Bid which resulted in the Contract unless otherwise agreed in writing between Dofasco (through the Authorized Representative or the Purchasing Representative) and Contractor;

"Subcontractor" shall mean a Person retained directly by Contractor, or indirectly by Contractor through a Subcontractor, to perform a portion of the Work (or engineering or other services in connection therewith), even if such Person is subject to some limited degree of supervision by Contractor in the performance of the Work and shall also mean a Person having a contract with Contractor to supply material in accordance with a design furnished by Contractor or Dofasco, but shall not include a Supplier;

"Supervisor" shall mean Contractor's representative so designated by Contractor from time to time for purposes of the Contract, who shall have full authority to represent and act for Contractor in all matters pertaining to the Work and shall be available at all times to properly co-ordinate all phases of Work during the Work;

"Supplier" shall mean a Person retained directly by Contractor, or indirectly by Contractor through a Subcontractor or another Supplier, who provides vehicles, equipment or machinery required for the Work, with or without operators, to perform a specific task under the supervision of Contractor; and shall also mean a Person who provides Contractor with materials, other than vehicles, equipment and machinery and other than materials in accordance with a design furnished by Contractor or Dofasco;

“Third Parties” means any Person other than Dofasco and Contractor, any director, officer, agent or employee of any such Person, and includes all Subcontractors, vendors, Suppliers, supplemental labour and **“Third Party”** refers to any one of them;

“Waste” shall mean all materials, including debris, rubbish, refuse, garbage, oils and so on generated during the Work, and which has no resale value and must be disposed of during or on completion of the Work;

"Warranty Period" shall mean the period

- (a) commencing with (i) in the case of any part of the Work which is suspended pursuant to section 13.1 and not resumed within six months of such suspension, the date as of which such suspension is effective; (ii) in the case of any part of the Work which is terminated pursuant to section 13.2 or 13.3, the date that such termination is effective; and (iii) in all other cases, the Date of Final Completion and
- (b) ending one year later;

"Work" means the Work contemplated by the Contract Documents and include all labour, materials, equipment, supervision, drawings and other services and things to be supplied or provided in accordance with or pursuant to the Contract Documents, which Work may constitute the whole or part of the Project;

"working day" shall mean a day other than a Saturday, a Sunday or a holiday which is generally observed by the construction industry in Hamilton, Ontario;

"writing" shall mean correspondence in hardcopy or printable media, which includes fax, scanned hard copy letters, telegram, email and electronic files.

Except where a contrary intention appears or the context otherwise requires, words which have well-known technical or trade meanings are used herein in accordance with such recognized meanings.

ARTICLE II CONTRACT DOCUMENTS

- 2.1 Complementary Nature** - The Contract Documents are and shall be deemed to be complementary, and what is required by any one thereof shall be as binding as if required by all.
- 2.2 Conflict between Documents** - In the event of any inconsistency or conflict between Contract Documents:
- (a) a document of later date shall govern over a version of the same document which bears an earlier date;
 - (b) specifications shall govern over drawings of any date;
 - (c) technical specifications shall govern over plant Engineering Standard Specifications;
 - (d) any internal conflict in the specifications or between different specifications shall be resolved in writing by the Authorized Representative;
 - (e) General Conditions shall govern over Contractor's Bid and any instructions given by Dofasco unless otherwise expressly provided in writing by the Authorized Representative;
 - (f) if Contractor has entered into a Contract with Dofasco in connection with the Work of which Specification O-OC, as may be revised from time to time, forms a part, the provisions of Specification O-OC shall govern the supply of equipment and materials under the Contract and in particular, without limiting the generality of the foregoing, the payment and warranty provisions contained in Specification O-OC shall pertain to equipment and materials supplied by Contractor in lieu of the provisions contained herein in respect of such matters;
 - (g) the Dofasco Purchase Order shall govern over the General Conditions.
- 2.3 Supplemental Instructions** - During the progress of the Work, the Authorized Representative may furnish Contractor with such additional instructions as he deems necessary to supplement the Contract Documents, which instructions may be in writing or in the form of drawings, samples and models. Such additional instructions, once accepted by Contractor, shall be deemed to be an amendment to the Contract Documents unless they constitute a change in the Work or the scope of the Work, in which event the provisions of ARTICLE IX apply.
- 2.4 Interpretation** - In the event of any dispute as to the implementation or effect of the Contract Documents:
- (a) the Authorized Representative shall have the right, in the first instance and for the purpose of ensuring that the Work proceeds, to determine in writing what interpretation, implementation or effect shall be given to the Contract Documents, and whether or not the Work is being performed, or has been performed, in accordance therewith;
 - (b) Contractor shall notify such Authorized Representative promptly in writing if it disagrees with any such determination; and
 - (c) the Authorized Representative shall have the right, if so notified, to require Contractor in writing to proceed with the Work while any such disagreement is being resolved.
- 2.5 Ownership of Contract Documents** - All Contract Documents and copies thereof, all other physical models and other documents and materials furnished by Dofasco, all physical models, Intellectual Property, as defined in section 15.10 and other documents and materials developed

by Contractor in connection with the Work and all tools or equipment paid for by Dofasco are and shall remain the property of Dofasco and shall only be used by Contractor in or in connection with the Work but (subject to section 6.2) Contractor shall bear the risk of loss of and damage thereto, normal wear and tear excepted.

- 2.6 Return of Documents** - If requested by Dofasco, all copies of the Contract Documents and the aforesaid models, tools, other documents, materials and equipment shall be returned to Dofasco upon the final completion or earlier termination of the Work, except Contractor may keep one copy of all documents for its Project record file, including a signed set of Contract Documents.
- 2.7 English Language** - All Contract Documents shall be in the English language.
- 2.8 Applicability of General Conditions Documents** - General Conditions O-OB shall govern all construction Work. If Contractor is supplying Equipment that is to be installed at Dofasco, such Work shall be governed by Specification O-OC. If Engineering or Consulting Work is required, that portion of the Work shall be governed by Dofasco's Specification O-OD.

ARTICLE III OBLIGATIONS OF CONTRACTOR

3.1 **Obligations Prior to Work** - Before commencing the Work, Contractor shall:

- (a) visit the Site, review all existing drawings pertaining to the Site, and thoroughly familiarize itself with all physical features (including subsurface features), working restrictions and working limitations in, on and about the Site with which it must deal;
- (b) review all of the Contract Documents and promptly report to the Purchasing Representative any ambiguities, errors, inconsistencies, omissions or discrepancies it may discover in any of them, or any non-compliance with applicable laws, ordinances, rules, regulations and codes relating to the Work;
- (c) designate the Supervisor and advise the Authorized Representative of the identity of such Person;
- (d) give five working days notice to the Authorized Representative prior to entering the Property;
- (e) prior to any Work on site, the Contractor and all Subcontractors must be or become signatory to Dofasco's Third Party Health, Safety and Environmental Program (hereinafter, the "HSE Program"), as may be revised from time to time;
- (f) obtain proper safety instructions by causing its Supervisor and its Subcontractors' Supervisors (if any) who will be supervising the Work to attend, not more than five working days before the Work is started by Contractor or any of its Subcontractors, a safety meeting held by Dofasco, and if approved to receive same, be issued a Safe Work Permit;
- (g) obtain and pay for all necessary visas, working permits and labour permits, licenses, registrations, certifications, declarations and other legal documents not supplied by Dofasco;
- (h) advise the Authorized Representative of the starting date and, if there is no Scheduled Completion Date, of the approximate final completion date of the Work;
- (i) provide Dofasco with Contractor's Workplace Safety and Insurance Board (WSIB) firm number and such other information as may reasonably be required by Dofasco to enable it to complete the "Notice of Project" form required under the Safety Act and, if Dofasco so requests, provide Dofasco with a copy of Contractor's WSIB certificate of clearance;
- (j) provide Dofasco with evidence of liability and other insurance coverage if so requested by Dofasco;
- (k) advise the Purchasing Representative of the estimated amounts of all Refundable Taxes and Non-refundable Taxes (as defined in section 11.7.1), and provide such other information with respect thereto as the Authorized Representative may require;
- (l) provide to the Authorized Representative the construction plan described in section 3.32.1 ;
and
- (m) provide the Authorized Representative with such other information and documentation as the Authorized Representative may reasonably require.

3.2 **Approval of Subcontractors/Suppliers** - Contractor shall give the Authorized Representative notice in writing, to be received by Dofasco within five working days of commencement of Work, setting out the names of the Subcontractors and/or Suppliers, if any, which it proposes to use and

stating the portions of the Work such Subcontractors and Suppliers shall perform or supply. All Subcontractors and Suppliers must successfully complete Dofasco's Third Party Health and Safety Pre-qualification process and become signatory to the HSE Program, as may be revised from time to time. The Authorized Representative may object to the use by Contractor of proposed Subcontractors or Suppliers and may require Contractor to retain some other Person, or may require Contractor to perform or supply such portion of the Work itself, but Dofasco shall not require Contractor to retain as a Subcontractor or Supplier any Person to whose retention Contractor may reasonably object in writing.

- 3.3 Form of Subcontract** - Contractor's subcontracts and purchase orders with its Subcontractors and Suppliers shall contain provisions consistent with the provisions of the Contract Documents. Contractor will obtain competitive quotation whenever possible and forward its bid analysis to the Purchasing Representative if requested. Contractor shall provide to the Purchasing Representative, at his or her request, copies of such subcontracts and of purchase orders issued by Contractor to Subcontractors and Suppliers, and Dofasco reserves the right to have the Authorized Representative approve the form of any and all such subcontracts and purchase orders prior to their execution by Contractor. Contractor shall have the right to delete price and cost information from any such subcontracts and purchase orders requested by Dofasco, where the Dofasco Purchase Order provides that the Work is to be performed on a "firm price" basis.
- 3.4 No Contractual Relationship** - Nothing contained in the Contract Documents and nothing done by Contractor shall create any contractual relationship between any Subcontractor or Supplier and Dofasco. Notwithstanding the foregoing, Contractor shall permit Dofasco to communicate directly with Suppliers and Subcontractors in all matters related to their performance of their respective supply agreements and subcontracts, except for matters which affect price or payment under such supply agreements or subcontracts.
- 3.4.1 Supplemental Labour** - The Contract is intended to be a contract for services between Dofasco and the Contractor. It is not intended to, and does not, create any employment or other relationship between Dofasco and any Third Party. All legal obligations relating to the employment, or termination of employment, of Contractor's employees, including, without limitation, obligations relating to notice, severance pay or vacation pay, are and shall remain Contractor's sole responsibility, and Dofasco accepts no responsibility for any such matters. Contractor further agrees to hold Dofasco harmless from any costs incurred by Dofasco in connection with any claim relating to such matters.
- 3.5 Supervision of Work** - Performance of the Work shall be diligently supervised by the Supervisor, who shall have authority to act for and bind Contractor, and all communications with the Supervisor will be deemed to have been made to Contractor at the time they are given to the Supervisor. The Supervisor shall have competent foremen in charge of the various aspects of the Work. Contractor shall not change its Supervisor except with the prior written consent of the Authorized Representative.
- 3.6 Compliance with Law** - Contractor shall ensure that the Work complies with all applicable laws, codes, regulations and ordinances which are in force on the date of Contractor's Bid Response, whether federal, provincial, municipal or promulgated by any other authority or body having jurisdiction with respect thereto including, without limitation, all laws and ordinances relating to the Project, and shall advise the Authorized Representative in writing of any changes to such laws and ordinances subsequent to the date of Contractor's Bid Response which result in the Work ceasing to comply with then current law. Contractor shall at all times comply with all laws and ordinances relating to the performance, construction, installation and/or operation of the Work and with all construction, environmental control and safety codes in effect during the period of performance of the Work.

3.7 Safety Requirements - Without limiting the generality of section 3.6:

- 3.7.1 Compliance** - The Contractor shall fully understand and comply with the requirements of the HSE Program and confirm that all its employees, Subcontractors, Suppliers and/or carriers comply with these requirements at all relevant times. If Contractor does not have a copy of these requirements, it is the Contractor's responsibility to contact Dofasco, request a copy, and acknowledge receipt and compliance before entering the Property.
- 3.7.2 Responsibility** - The Contractor shall ensure that the requirements of the Safety Act and any safety requirements that may be established by Dofasco are complied with, and to ensure that each of his Subcontractors complies with the requirements of the Safety Act and any requirements established by Dofasco. If, in the opinion of Contractor, there may be unsafe work conditions or practices at the Site, then Contractor shall immediately take such measures as are required in order to remedy such practices or conditions, and shall immediately notify the Authorized Representative (which for this purpose shall be such Person(s) as may be designated by Dofasco as its engineer, construction manager, construction safety supervisor or other comparable position for the Work).
- 3.7.3 Infractions** - Contractor shall provide to the Authorized Representative, forthwith after receipt by Contractor, a copy of any Ministry of Labour project inspection reports issued to Contractor or any of its Subcontractors in connection with the Work.
- 3.7.4 Disposal of Waste** - The Contractor shall, and shall cause its Subcontractors to, review with the Authorized Representative (in conjunction with Dofasco's By-Products Sales Group and Dofasco's Environment and Energy Department) the method by which it is proposing to dispose of any materials or other wastes which are on the Site, the disposal of which is regulated by applicable law, prior to disposing of such materials and wastes, unless the method of disposition is specified in the Contract Documents. The Contractor shall use all commercially reasonable efforts to divert waste disposal from landfills.

At Bid submission, Contractor shall advise Dofasco of the registered dump site(s) which are accredited for the disposal of all Hazardous and Non-Hazardous materials. All sites are subject to the approval from Dofasco's By-Products Sales Group.

Contractor shall arrange and be responsible for the proper removal of all oils, materials and debris generated during the Work, including but not limited to, lubricating and hydraulic oils, steel, equipment, brick, refractories, lumber, concrete, asbestos and all other materials generated by the Work. The Waste will be transported and disposed of at the expense of the Contractor at an approved location. The disposal site shall be off Dofasco's Property and shall be arranged for by the Contractor. Dofasco shall supply the Contractor a container for the collection of all steel generated during the Work.

Unless the Contract Documents specify other arrangements, Contractor shall use Dofasco's recycling depots wherever possible.

Burning of debris on Dofasco Property is NOT allowed.

- 3.7.5 Water Discharge** - No residuals or contaminated water will be permitted on the Property or any water treatment facilities, drainage systems, storm sewers or sanitary sewer systems associated with the Property. Contractor shall cause all hazardous or toxic materials to be properly disposed of by the Contractor at a location off the Property that has been approved in advance by Dofasco's By-Products Sales Group and Dofasco's Environment and Energy Department.

- 3.7.6 Manhours** - The Contractor shall supply to the Authorized Representative manhours for his workforce and all Subcontractors in such form as may from time to time be required by the Authorized Representative.
- 3.7.7 Evaluation of Contractors Performance** - The Contractor will be evaluated on its Health and Safety performance in performing the Work. Dofasco may conduct formal audits on a regular basis to assess the level of compliance with Dofasco's Third Party Health, Safety and Environment program. Any such audit may include an assessment of performance against the rules, responsibilities, and safe work practices contained in the Dofasco Third Party Health, Safety and Environment Manual and within the Third Party Employee Handbooks.
- 3.7.8 Hazardous Materials** - All hazardous materials delivered to the Property must have WHMIS labels. To ensure that hazardous materials are handled correctly, Dofasco must receive Material Safety Data Sheets from the Contractor prior to receipt of materials. Material Safety Data Sheets provided to Dofasco must be kept current and as a minimum updated every three years. Updated sheets, indicating the Dofasco Stock Code number and the Dofasco Purchase Order number are to be sent to Dofasco's Health and Safety Department. Dofasco supports the use of goods and services that have minimal adverse impact on the environment. Products that do not contain chemicals as identified by various government programs are favoured. These programs include, but are not limited to ARET and NPRI. All purchased materials used in part manufacture shall satisfy current government and safety constraints on restricted, toxic and hazardous materials; as well as environmental, electrical and electromagnetic considerations applicable to all purchased materials.
- 3.8 Inspection of Work** - If at any time during the performance of the Work the whole or any part or parts of the Work are required to be tested, inspected, or approved (i) pursuant to the Contract Documents, Contractor shall give the Authorized Representative timely notice of its readiness for inspection and (ii) by an authority other than Dofasco, Contractor shall arrange for such inspections and shall give the Authorized Representative timely notice of the date and time fixed for such inspections. For the purposes of this section 3.8, "timely notice" shall mean, in cases where the Work is being performed in Canada or the United States, five working days, and in all other cases, ten working days. Contractor shall furnish promptly to the Authorized Representative all certificates given by, and copies of all inspection reports of tests done on the Work by any Third Party. Contractor shall also permit and shall cause its Subcontractors or Suppliers to permit Dofasco's authorized agent to enter Contractor's or its Subcontractors' or Suppliers' premises, as the case may be, to perform whatever testing or other inspection of the Work it deems necessary or desirable. Inspection by or on behalf of Dofasco does not constitute acceptance of the Work for any purpose.
- 3.8.1 Quality Assurance / Quality Control** - The Contractor shall follow its own quality assurance / quality control program. If required by the Contract Documents, the Contractor shall also follow Dofasco's Quality Assurance Standards as outlined in EXHIBIT G. Dofasco reserves the right to apply the Dofasco Quality Assurance Standards to the Contractor, Subcontractors and the Work.

Monitoring and surveillance for quality assurance purposes by Dofasco does not relieve Contractor or Subcontractors of their obligation to inspect the Work. Failure of Dofasco to detect quality problems does not relieve Contractor or Subcontractors of their obligation to provide quality workmanship that conforms to the requirements of the Contract Documents.

The Contractor shall perform quality inspections of its Work and generate any required documentation associated with such inspections. Inspections may be performed by qualified inspectors employed by Contractor or by a qualified outside inspection agency.

3.9 Co-ordination of Work - Contractor shall schedule and co-ordinate the performance of the Work with the Authorized Representative and shall cause its employees, agents, servants and Subcontractors and Suppliers and their employees to perform the Work in a manner so as to:

- (a) cause the minimum possible disturbance and interference with the business operations of Dofasco and the performance by Dofasco's employees of their duties;
- (b) co-ordinate the performance of the Work with other activities on the Project; and
- (c) connect with other parts of the Work and the Project as specified or shown in the Contract Documents.

3.10 Responsibility for Materials, Labour and Construction

3.10.1 Materials Supplied - Unless otherwise specified in the Contract Documents, all materials incorporated in the Work shall be new, shall conform to the specifications of the Canadian Standards Association and to all applicable federal, provincial and municipal codes, and shall be provided in the quantities and with the frequency required to avoid delay in the progress of the Work. In the performance of the Work, Contractor and its Subcontractors and Suppliers must use, to the maximum extent such use is consistent with economy, efficiency and utility, products manufactured or produced by Dofasco, its subsidiaries, or entities in which Dofasco has a significant financial interest (to the extent such subsidiaries or other entities are identified in the Contract Documents) unless the Contract Documents otherwise provide; provided that nothing in this section 3.10.1 shall be deemed to obligate Dofasco, its subsidiaries or such other entities to provide products to Contractor or its Subcontractors and Suppliers or to adjust their allocation of steel or other products.

3.10.1.1 Contractor Discounts - All discounts are to be passed on, dollar-for-dollar, to Dofasco. Contractor will obtain competitive prices when possible and forward bid analysis to the Purchasing Representative when requested.

3.10.1.2 Use of Dofasco's Preferred Suppliers - If requested in the Contract Documents, Contractor shall purchase materials from Dofasco's preferred Suppliers using pricing approved by Dofasco.

3.10.1.3 Material in Storage - All material which is stored by the Contractor prior to use or installation on Site is the responsibility of the Contractor for the duration of the storage period.

3.10.2 CSA Approval - All electrical equipment supplied to Dofasco shall bear a Canadian Standards Association (CSA) label, Electrical Safety Authority Label or some other marking acceptable to the Electrical Safety Authority, as required by applicable law including the Ontario Electrical Safety Code, Rule 2-024, as may be revised from time to time. Listing of acceptable certification organizations shall be detailed on the Electrical Safety Authorities Bulletin 2-7-20 as may be revised from time to time. It shall be the sole responsibility of the Contractor to arrange for any inspection required and ensure the required labels are in place before shipment to Dofasco.

3.10.3 Canadian Manufacture - Except if otherwise specified or agreed to in writing by the Authorized Representative, all materials and parts used by Contractor must be of Canadian manufacture to the maximum extent such use is consistent with economy, efficiency and utility. Contractor shall also, throughout the term of the Contract, identify alternate materials and parts available from foreign Suppliers which are equal or better and the cost savings or benefits to Dofasco which would result if such foreign source materials and parts were substituted for those of Canadian manufacture.

3.10.4 Trade Agreements - Under the terms of the North American Free Trade Agreement (NAFTA), Dofasco requires a NAFTA Certificate of Origin on goods shipped qualifying as Mexico or U.S. manufacture. Under the terms of the Canada-Chile Free Trade Agreement (CCFTA) and the Canada-Israel Free Trade Agreement (CIFTA) a Certificate of Origin is required on goods shipped qualifying as Chile or Israel manufacture. The certificates are to be sent prior to shipping to Dofasco, defined as 'DFS' and DoSol Galva Limited Partnership, defined as 'DSG', Customs Department. 'DFS / DSG'.

Contractor shall be liable to 'DFS / DSG' for any duties, interest, penalties or other amount assessed or levied against 'DFS / DSG' as a result of any invalid or improper certificate as required above. 'DFS / DSG' shall be entitled to deduct any such amount from any account outstanding between 'DFS / DSG' and Contractor. This remedy of 'DFS / DSG' shall be in addition to and not in substitution for any other remedies available to 'DFS / DSG' at law.

Contractor is to identify on commercial invoices and shipping documents, the 'Country of Origin' being the 'country of manufacture' and tariff number on all goods shipped to 'DFS / DSG'. Failure to do so, resulting in any duties, interest, penalties or other amount assessed or levied against 'DFS / DSG' as a result of improper declaration of tariff treatment due to invalid country of origin or tariff number as required above, will entitle 'DFS / DSG' to deduct any such amount from any account outstanding between 'DFS / DSG' and Contractor. This remedy of 'DFS / DSG' shall be in addition and not in substitution of any other remedies available to 'DFS / DSG' at law.

3.10.5 Test Reports and Samples - If requested by the Authorized Representative, test reports relating to, and samples of, materials and parts shall be furnished to the Authorized Representative sufficiently in advance of their incorporation into the Work to allow Dofasco to determine their acceptability. If Dofasco determines that such materials or parts are not acceptable, and so advises Contractor within a reasonable time, Contractor shall not incorporate them in the Work. If Dofasco determines that such materials or parts are acceptable, the materials or parts actually incorporated in the Work shall be equivalent or superior to those tested or to the samples.

3.10.6 Labour - If the Authorized Representative advises Contractor that it considers any Person employed in connection with the Work to be incompetent or negligent or unfit for his duties for any other cause whatsoever, or requests that any such Person be removed from the Work because he is not complying with the HSE Program, Contractor shall forthwith remove such Person from employment on the Work and that Person shall not again be employed on the Work without the prior written approval of the Authorized Representative.

3.10.6.1 Labour Supplied - Contractor shall have properly trained, certified and competent employees do the Work.

3.10.6.2 Trade Ratios - If the scope of Work requires that unionized trades people be used to perform all or any part of the Work, then Contractor shall ensure that, throughout the performance of such Work, all union building trade ratios (e.g., Journeyman to Apprentice) are adhered to.

3.10.7 Construction - Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures employed in connection with the Work and for the design, erection, operation, maintenance and removal of any temporary structural or other temporary facilities constructed in association with the Work; provided that if the Contract Documents specify a method of construction, in whole or in part, then Contractor shall be solely responsible for the proper execution of such specified method of construction and equally responsible, together with Dofasco, for the suitability of the method. Contractor shall engage skilled registered professional engineers in connection with the foregoing if required by law or by

the Contract Documents or if the nature of the Work or of such temporary facilities and their method of construction is such that professional engineering skill is required to produce safe and satisfactory results.

- 3.11 Manner of Performance** - All of the Work shall be executed by Contractor or under its supervision in a thorough, substantial and workmanlike manner, in accordance with the Contract Documents, and Contractor shall complete the Work by the Scheduled Completion Date.
- 3.12 Operation on Premises**
- 3.12.1 Confinement of Operations** - Contractor shall: confine its equipment, the storage of its materials and the operations of its workers to the area, if any, established by the Contract Documents or the Authorized Representative; not unreasonably encumber the Site with its materials; and not load or permit to be loaded any part of the Work with a weight that will endanger the safety of such part of the Work. Contractor shall maintain the Work and any lands affected by the Work in a tidy condition and shall not permit the accumulation of waste materials and debris on or about the Site.
- 3.12.2 Adherence to Dofasco's Rules** - Contractor shall strictly observe and enforce Dofasco's rules and instructions regarding signs, advertisements, fires, smoking, and any other regulations of Dofasco of general application to the activities of Contractor, its agents, employees, Suppliers or Subcontractors and shall ensure that its agents, employees, Suppliers or Subcontractors observe and enforce same.
- 3.12.3 Protection of Property** - Contractor shall conduct its operations in such a manner as to prevent damage to the property adjacent to the Site, and shall take all reasonable measures to protect the Work and Dofasco's property from loss or damage from any cause whatsoever including, without limitation, any loss or damage caused by the elements. Contractor shall be responsible for protecting existing underground and overhead utilities from damage when such utilities are shown on drawings, pointed out by the Authorized Representative, or are clearly visible. Contractor shall obtain approval from the Authorized Representative before making any lifts over gas mains, power lines, operating facilities and live utility lines during the Work.
- 3.12.4 Maintenance of Services** - Contractor shall mark all lines of temporary services that it may install underground, under water, on the surface or overhead, with approved markers installed on the surface. The installation of all temporary services shall comply in every respect with the requirements of the relevant statutory authority. Contractor shall operate and maintain, at all times, any service that it has installed in a serviceable and workable condition and shall carry out any necessary repairs or maintenance immediately if they become necessary for whatever reason.
- 3.13 Provision of Services** - If the Dofasco Purchase Order provides that the Work is being performed on a "firm price" basis:
- 3.13.1 Hydro and Water** - If the necessary electric power and water service for the performance of the Work are not available, Contractor must, at its sole cost, provide all such services required for the Work.
- 3.13.2 Construction Services** - Contractor shall, at its sole expense, install and maintain any other construction services which are deemed by the Authorized Representative to be required for the completion of the Work including, without limitation:
- (a) temporary services, including all hook-ups;

- (b) at least one telephone / cellular phone available to all trades and to Dofasco and the Authorized Representative, toll and long distance charges being paid for by those making the calls;
- (c) one weather tight office 8'0" x 16'0" minimum size, maintained dry, warm, clean, well-lit (naturally and artificially), properly ventilated, fitted with doors which lock, table, chairs, racks for drawings, filing cabinets and shelves;
- (d) one or more weather tight sheds, as required, for storage of materials, tools and equipment, except any sheds required by the trades and provided by them;
- (e) portable, weatherproof, chemical toilets serviced at least weekly;
- (f) heat, heating equipment and shelter to keep that part of the Work which requires protection from cold adequately warm and sheltered from the elements to allow the Work to be done safely and well;
- (g) roads, walks, ramps, stairs, and such other means of access as may be required;
- (h) lunchrooms and comfort stations, as required; and
- (i) temporary lighting, as required.

All temporary installations set out above shall comply with all applicable laws, shall meet the reasonable requirements of Dofasco, and shall be removed by Contractor promptly upon completion of the Work.

- 3.14 Notice of Deficiencies** - Contractor shall, promptly upon becoming aware thereof, report to the Authorized Representative any apparent deficiencies in the Work or activities of other contractors employed on the Project, or in the Work or activities of Dofasco, which would or would be likely to affect the Project, and shall confirm such report in writing.
- 3.15 Site Security** - Contractor shall provide competent security at the Site at all times when no Work is actually in progress if the Authorized Representative or Contractor determines it is necessary for the protection of Dofasco, its property or the public. Contractor shall assume risk for its tools and equipment, whether they are owned or rented, and Contractor shall clearly communicate this assumption of risk to its employees.
- 3.15.1 Traffic Control** - Contractor shall provide a traffic director at any time when traffic control is deemed necessary or desirable by Contractor or the Authorized Representative.
- 3.16 Right to Audit** - Contractor shall, for a period of not less than three (3) years from the Date of Final Completion the Work is performed maintain books, records and accounts relating to the subject matter of the Contract and the Work. The Contractor shall permit Dofasco's employees and agents to audit its books and records at such location at Dofasco's requests (and shall cause its Subcontractors and Suppliers to do the same) for the purpose of determining whether Bidder has complied with the Contract created by the Contract Documents including, without limitation, compliance with contract requirements, Dofasco's general code of business conduct, change order pricing, prices on invoices generally verifying, including invoices rendered pursuant to section 11.3., and any claims rising under or in connection with any Contract. Bidder shall cooperate fully with any such audit and shall cause its employees, agents, Subcontractors and Suppliers to do the same. Records that Dofasco shall have access to include, but are not limited to, the records listed in EXHIBIT E. Contractor represents and warrants to Dofasco that it has obtained, and agrees that it will obtain, all such consents as may be required under applicable

legislation including the *Personal Information Protection and Electronic Documents Act* (Canada) and any other applicable privacy legislation ("Privacy Legislation") to permit Dofasco to review personal information of any individuals identified in the books and records of Contractor and its Subcontractors and Suppliers. Contractor shall indemnify Dofasco with respect to any losses, costs, claims or damages incurred or suffered by Dofasco as a result of the inaccuracy of such representation or the breach of such warranty and agreement.

- 3.16.1 Right of Access** - Dofasco reserves the right, for itself and on behalf of its customers, of access to Contractor's and Subcontractors' manufacturing facilities by Dofasco's employees and representatives and Dofasco's customers' employees and representatives for the purposes of verifying at the point of manufacture that the purchased product conforms to the specifications documented on the Dofasco Purchase Order and the Contract Documents. Dofasco, its representatives, its customers or its customers' representative also reserves the right to verify upon receipt that the Work conforms to Contract Documents. Verification by Dofasco its representatives, its customer or its customer's representative does not absolve the supplier of their responsibility to provide products which meet the specifications documented on the Dofasco Purchase Order or Contract nor does it rule out subsequent rejections. When verification is completed at its Contractor's manufacturing facility, such verification is not used as evidence of effective quality control by the Contractor.
- 3.16.2 Personal Information** - In the event that Contractor provides Dofasco with any personal information with respect to any individual, Contractor consents to the use of such information by Dofasco for the purposes of emergency, health and safety and/or contract administration. Contractor represents and warrants to Dofasco that it has obtained, and agrees that it will obtain, all such consents as maybe required under Privacy Legislation to permit Dofasco to so use such information. Contractor shall indemnify Dofasco with respect to any losses, costs, claims or damages incurred or suffered by Dofasco as a result of the inaccuracy of such representation or the breach of such warranty and agreement.
- 3.17 On Site Contract Documents** - Contractor shall keep one copy of all Contract Documents and shop drawings on the Site, in good order, marked up to reflect the current state of any field changes made during construction, and available to Dofasco and its representatives, and shall cause its Subcontractors and Suppliers to provide to the Authorized Representative or to such Person as he may direct during the course of the Work such drawings and other materials and information as may be requested from time to time by Dofasco.
- 3.18 Revocable Licence** - Contractor hereby acknowledges and agrees that:
- (a) the only right, legal or otherwise, given to it by the Contract Documents to occupy or use the Site or any other land owned, leased or occupied by Dofasco is a revocable licence which may be withdrawn at any time verbally or in writing and without any prior notice; and
 - (b) upon demand by the Authorized Representative at any time, either verbally or in writing, Contractor will vacate and will cause its Subcontractors and Suppliers to vacate immediately any such lands and will restore without delay all such lands to the same condition as existed prior to the use or occupation thereof by any of Contractor and its Subcontractors and Suppliers.
- 3.19 Final Clean-Up**
- 3.19.1 Firm Price Contract** - If the Dofasco Purchase Order provides that the Work is to be performed on a "firm price" basis, prior to the Date of Final Completion of the Work, subject to section 3.7.4 and unless otherwise instructed by the Authorized Representative, Contractor shall, at Contractor's sole expense, remove from the Site all surplus materials, tools and equipment (other

than materials, tools and equipment which are the property of Dofasco) and any and all waste and debris, and shall leave the Site clean and suitable for occupancy and productive use by Dofasco. Before removing ferrous or non-ferrous metallic scrap from the Site, Contractor and its Subcontractors shall offer to sell such scrap to Dofasco at a price and otherwise on terms agreed with Dofasco.

3.19.2 Reimbursable Cost Contract - If the Dofasco Purchase Order provides that the Work is to be performed on a "reimbursable cost" basis, all ferrous and non-ferrous scrap recovered by Contractor and its Subcontractors in connection with the Work shall be the property of Dofasco and shall be stored and shipped in accordance with instructions from Dofasco. Contractor shall be responsible for the storage and disposal of ferrous and non-ferrous scrap by its Subcontractors. Upon final completion of the Work, subject to section 3.7.4 and unless otherwise instructed by Dofasco, Contractor shall stockpile in an orderly manner at the Site all surplus materials, tools and equipment (other than materials, tools and equipment which are the property of Contractor) and shall remove all waste and debris, and shall leave the Site clean and suitable for occupancy by Dofasco.

3.20 Additional Costs Borne by Contractor - Contractor shall be solely liable for and shall pay the following costs:

- (a) costs incurred in examining the re-work of any Work found by Dofasco not to be in accordance with the Contract Documents;
- (b) costs incurred in uncovering and restoring any portion of the Work if the Contract Documents, Dofasco's instructions to Contractor or any relevant law require inspection and the portion of the Work to be inspected is covered before such inspection;
- (c) any additional costs resulting from the Contract Documents being, at the time of their initial examination by Contractor, at variance with any applicable laws, rules, regulations and codes relating to the Work if Contractor failed to notify the Authorized Representative in writing of such variance; and
- (d) all costs, expenses and damages attributable to Contractor's failure to comply with applicable laws, rules, regulations, codes and orders relating to the Work or the performance of the Work if, prior to such non-compliance, Contractor has failed to notify the Authorized Representative in writing and to obtain the Authorized Representative's consent thereto.

If Dofasco pays any costs for which Contractor is liable under this section 3.20, Contractor shall forthwith reimburse to Dofasco the amount of such costs promptly upon notice from Dofasco.

3.21 Discharge of Liens - Contractor shall forthwith vacate and discharge or cause to be vacated and discharged all claims for which construction or other liens have been registered against Dofasco's lands (other than liens registered by Contractor) as a consequence of the performance of any portion of the Work. The cost thereof shall be borne by Contractor.

3.22 Performance or Other Types of Bonding - If Dofasco or the Contract Documents require Contractor to obtain one or more bonds, Contractor shall promptly provide Dofasco with such bonds in a form satisfactory to Dofasco, issued by a duly incorporated surety company authorized to transact the business of suretyship in the Province of Ontario and approved by Dofasco, and shall maintain such bonds in good standing until such date as may be required by Dofasco. If Dofasco, subsequent to issuing the Dofasco Purchase Order, requires one or more such bonds, Dofasco shall reimburse Contractor the cost thereof.

- 3.23 Letters of Credit** - If the Contract Documents require Contractor to obtain one or more letters of credit, Contractor shall promptly provide Dofasco with such letters of credit in a form satisfactory to Dofasco (e.g., in the form of **Error! Reference source not found.**) issued by a financial institution approved by Dofasco, and shall maintain such letters of credit in good standing in accordance with the Contract Documents.
- 3.24 Patent Infringement** - Subject to section 4.1, Contractor shall hold Dofasco harmless against all claims, demands, losses, costs, damages, actions, suits or proceedings which are attributable to any infringement or any alleged infringement of any patent of invention or other proprietary right arising from the Work; provided, however, that:
- (a) Dofasco shall notify Contractor promptly in writing of any such claim or proceeding;
 - (b) Dofasco hereby authorizes Contractor to defend or settle, at its own expense, any such claim or proceeding and, if necessary, to procure at Contractor's expense Dofasco's right to continue using the Work, provided that Dofasco shall be permitted by Contractor to participate in all discussions and decisions of Contractor with respect to such claims and proceedings and Dofasco shall, at no cost to itself, assist Contractor in defending against claims by third parties for such infringement; and
 - (c) in the event that infringement is established and Contractor is unable, for a reasonable fee, to procure Dofasco's right to continue using the Work, Contractor shall modify or replace the infringing portion of the Work to the satisfaction of Dofasco so that it is non-infringing and so that the Work can continue to be used in the same manner as had been contemplated by the Contract Documents.
- 3.25 Confidentiality** - Contractor shall hold in strict confidence and secrecy in perpetuity and shall not at any time disclose to others or use for any purpose whatsoever (except to the extent necessary to perform the Work) any information about Dofasco's operations, processes, methods, equipment, products, sales, or any other information which is provided to Contractor by Dofasco and which Dofasco specifies as confidential, or any other information of which it gains knowledge in the course of performing the Work, provided that this prohibition shall not apply to any information which was already known to Contractor (as shown by written records) or which is generally known to the public (through no act of Contractor). Contractor shall ensure that its employees, its Subcontractors and Suppliers and their employees observe the confidentiality obligations contained in this section 3.25.
- 3.26 Drawings and Specifications**
- 3.26.1 Delivery** - Contractor shall deliver to Dofasco drawings, calculations, schedules, information, data, instructions, manuals and all other information and submittals, as required by the Contract Documents, and in accordance with any schedule therefore established in the Contract Documents.
- 3.26.2 Format** - All drawings prepared by Contractor shall conform to Dofasco Specification EMT-6982-DWG-102 (Requirements for Consultants' Drawings) as revised or amended from time to time. All specifications prepared by Contractor shall be submitted to Dofasco electronically and in hard copy. All specifications shall include Dofasco specification numbers as provided to Contractor and all detail cross-referencing shall be by Dofasco's specification numbering system.
- 3.26.3 Drawing Certification** - Contractor shall not submit any drawing to Dofasco which has not been competently checked to be in accordance with the specifications contained in the Contract Documents and which has not, and which has not, if so required by law, been certified with the stamp of a competent professional engineer properly registered with the Association of

Professional Engineers of Ontario. Contractor shall also certify, with respect to such drawings, at such time as Dofasco may specify, all information required for the engineering of the installation and operation of the Equipment to which such drawings relate (including, without limitation, dimensional data, weight, foundation and loading). Contractor will be responsible at its sole cost to make any changes to these drawings deemed necessary by Dofasco, in order to meet the specifications contained in the Contract Documents; and such changes shall not be permitted to adversely affect the Scheduled Completion Date.

3.27 As Built Drawings - Contractor shall deliver to the Authorized Representative, forthwith upon completion of the Work, a full set of “as built” drawings, being the latest revision of drawings marked up in a manner acceptable to the Authorized Representative, based on the information provided to the Contractor by Dofasco, such that changes are clearly legible and clearly indicate the actual Site condition upon completion of the Work.

3.28 Dofasco Supplied - Contractor is responsible for receiving pre-arranged direct shipments from Dofasco suppliers on site, and picking up or arranging delivery for Dofasco-supplied material and equipment at the Dofasco location specified in the Contract Documents.

Contractor shall give Dofasco stores personnel at the specified Dofasco location a minimum of two working days notice, using the applicable requisition form, of its requirements of Dofasco-supplied material and equipment that Contractor intends to pick up or to have delivered. Material will be available from the Dofasco location or from vendors within a 10 km radius of the Site.

Contractor shall call down such material in economical quantities and is responsible for the security of all such Dofasco-supplied material and shall provide to the Purchasing Representative, on a monthly basis, a reconciliation of all such material received (reconciled between “issued” and “as built”). Any surplus material or equipment must be either returned to its original location or, if not so returned, a reimbursement made in respect thereof to Dofasco by Contractor.

3.29 Supply of Tools - Unless the Contract Documents otherwise expressly provide, Contractor shall provide, at no additional cost to Dofasco, all tools and other materials required to enable it to perform the Work. If the Contractor is to use Dofasco tools or equipment, Contractor shall execute and deliver to the Purchasing Representative, in respect of such use, a Property Release and Indemnity form in the form of EXHIBIT D.

3.30 Immigration Clearance - Contractor shall be responsible for obtaining all necessary permissions and consents required under applicable law including the *Immigration and Refugee Protection Act* (Canada) and the regulations thereunder, as may be revised from time to time, for the performance of those portions of the Work which are to be performed in Canada by Persons who are not landed immigrants in, or citizens of, or otherwise legally entitled to work in, Canada. Dofasco will use commercially reasonable efforts to assist Contractor in obtaining, at Contractor's expense, such permissions and consents.

3.31 Time for Completion - Subject to any requirement in the Contract as to completion of any portion of the Work before completion of the whole, the whole of the Work shall be completed by the Scheduled Completion Date or any extension thereof which is granted pursuant to these General Conditions.

3.32 Construction Plan

3.32.1 Plan to be Furnished - The Contractor shall submit to the Authorized Representative for approval, if requested, the construction plan and schedule pursuant to which Contractor will show the proposed sequence of the Work and completion dates for various phases of the Work,

including prefabrication, delivery to Site, erection and testing (the "Construction Plan"). Contractor shall obtain clearance from the Authorized Representative before starting each phase of the Construction Plan. The Contractor shall submit the Construction Plan within 10 working days of the date of the Dofasco Purchase Order, in such form as is approved by the Authorized Representative. The Construction Plan shall be updated by the Contractor and submitted to the Authorized Representative every 10 working days (or such other period as the Authorized Representative may specify in writing) for the duration of the Contract. All Work is to be performed in compliance with the Construction Plan.

3.32.2 Alteration to Plan - No alteration to the Construction Plan shall be made without the prior written approval of the Authorized Representative.

3.32.3 Progress Reports - The Contractor shall monitor progress of all the activities specified in the Construction Plan, and supply a progress report to the Authorized Representative every month in a form acceptable to the Authorized Representative, which report:

- (a) shall indicate percentage completion achieved for each activity during the reporting period, or since the last report was issued, compared with the percentage completion planned for each activity;
- (b) if percentage completion achieved is less than percentage completion planned, shall comment on the likely consequences of the delay and state the corrective action being taken;
- (c) shall indicate manpower loading, materials purchased, earned value and any other items requested by the Authorized Representative.

3.32.4 Recovery Plan - If at any time Contractor's achieved progress falls behind the planned progress set out in the Construction Plan, or it becomes apparent that it will so fall behind, Contractor shall produce, at the request of the Authorized Representative, a recovery plan taking into account the prevailing circumstances and shall advise the Authorized Representative in writing of the steps being taken to expedite progress so as to meet the Scheduled Completion Date.

3.33 Parking - Dofasco may provide for Contractor's use, an off-Site Dofasco parking lot, which is to be used by the Contractor, its employees and its Subcontractors entirely at the risk of the Contractor, its employees and its Subcontractors. Contractor shall clearly communicate to its employees and Subcontractors that they will be parking at their own risk, and Dofasco shall not be liable for any damage or injury, regardless of how caused. Contractor shall cause employees of Contractor and its Subcontractors to drive on Dofasco designated roads and park in the designated areas.

3.34 Calibration - At the request of the Authorized Representative, Contractor shall provide current calibration certificates (certification within 1 year of device use) that confirm that all measurement devices to be used in connection with the Work are calibrated and traceable to national standards and performed by a nationally certified calibration facility. Each device shall have a unique identification number complete with a calibration sticker that is referenced on the corresponding calibration certificate.

Approved calibration service providers are found on Dofasco's Purchasing Tier 3 Supplier list. Facilities not on the list must conform to ISO/IEC Guide 25 or ISO17025 standards.

Dofasco reserves the right to perform verification of measurement device accuracy on site for measurements it deems critical to its equipment.

- 3.35 Gate Passes** - Contractor shall be required to request gate passes from the Authorized Representative for all third party personnel required by the Contractor to come on site. Dofasco will issue individual gate passes for requested third party personnel which must be shown when entering Dofasco property. Prior to entrance to Dofasco property all third party personnel, performing Work at Dofasco must first attend a Safe Work Permit meeting, as per section 3.1.
- 3.36 Incoterms 2000** - As stated in the Contract Documents, the specified Incoterms 2000, as may be revised from time to time, must be used for the delivery of all material and equipment.
- 3.37 Contractor Travel** - Contractor shall be responsible for travel visas and travel arrangements for its personnel when traveling in relation with the Contract.
- 3.38 Contract Completion** - The Contract shall be complete upon all of the following having been satisfied, at which time Contractor shall deliver a completed Completion Certificate (as required by section 11.6) to Dofasco, and Dofasco will approve if:
- (a) the Work has been completed, in all respects in accordance with the Contract Documents;
and
 - (b) Contractor has delivered to Dofasco the As Built Drawings as required by section 3.27 and any other documentation requested by Dofasco, and Dofasco has accepted same (such acceptance not to unreasonably withheld).
- 3.39 Rates Engine** - Contractor shall be required to submit Rates through Dofasco's Rates Engine for all types of Work it has approval to perform at Dofasco.

ARTICLE IV OBLIGATIONS OF DOFASCO

- 4.1 Patent Infringement** - Dofasco shall hold Contractor harmless against all claims, demands, losses, costs, damages, actions, suits or proceedings (in this section 4.1, "claims") arising out of Contractor's performance of the Contract which claims are attributable to any infringement or any alleged infringement of any patent of invention or other proprietary right in executing anything for the purpose of the Contract and which claims arise out of (i) any model, plan or design supplied to Contractor by Dofasco or (ii) any equipment or materials specified by Dofasco to be furnished by third parties that are not the result of Contractor's design or instructions; provided however, that:
- (a) Contractor shall notify Dofasco promptly in writing of any such claim; and
 - (b) Contractor hereby authorizes Dofasco to defend or settle, at its own expense, any such claim and Contractor shall, at no cost to itself, assist Dofasco in defending against claims by third parties for such infringement.
- 4.2 Datum for Lines** - Dofasco will provide Contractor with initial datum for lines and levels in the form of basic horizontal and vertical control datum (monuments and benchmarks).
- 4.3 Regulated Substances - Dofasco** - An inventory of Regulated Substances stored, handled or used by Dofasco in the vicinity of the Work will be provided to Contractor by Dofasco. Unexpired material safety data sheets for such substances will be available to Contractor upon request.
- 4.4 Cranes and Manlifts** - Dofasco shall supply cranes and manlifts for Contractor's use as required in connection with the performance of the Work. Usage of cranes and manlifts by the Contractor will be subject to audit by Dofasco and overrun of the usage estimate provided in the Contractor's Bid Form or inefficient use will result in a backcharge.
- 4.5 Access to the Site** - Provided that Contractor and its Subcontractor(s) are, and remain, in full compliance with the Contract Documents and the HSE Program and other regulations of Dofasco, Contractor and/or its Subcontractor(s) shall have the right to enter the Property in connection with the performance of the Work and in accordance with the Construction Plan.
- 4.6 Communications to Contractor** - All written instructions, orders, notices and other communications delivered by Dofasco to Contractor's Supervisor or Contractor's temporary construction office shall be deemed to have been delivered to Contractor itself.

ARTICLE V DELIVERY

- 5.1 Firm Price - Unloading of Materials and Equipment** - If the Dofasco Purchase Order provides that the Work is to be performed on a "firm price" basis, materials and equipment for use in connection with the Work shall be unloaded at the Site at the expense of the Contractor, who shall furnish all labour, tools, rigging and appliances required therefore.
- 5.2 Point of Delivery** - Materials and equipment for use in connection with the Work shall be delivered to the Site. Contractor shall be responsible for making all payments and arrangements related to transporting the materials and equipment to the Site, and for proper loading and blocking of the equipment and materials prior to transport.
- 5.3 Parts** - Each part used or to be used in connection with the Work shall be tagged by Contractor with a tag which shows the quantity of the particular part shipped the description, size, and part number and/or drawing number of the part as designated by Dofasco.
- 5.4 Miscellaneous Items** - Miscellaneous items such as bolts and fittings to be used in connection with the Work shall be kept separate by Contractor either by its using separate containers or by its partitioning containers, and any such container shall be tagged by Contractor to identify its contents (as set out in section 5.3) and the end use of such items.

ARTICLE VI TITLE AND RISK

- 6.1** **Title** - Title to and property in the Work and all constituent elements thereof, whether or not in a deliverable state, shall pass to Dofasco at the date Dofasco makes a payment.
- 6.2** **Risk** - Notwithstanding section 6.1, if Contractor is maintaining property insurance pursuant to section 7.4, risk of loss of or damage to the Work shall be borne by Contractor until the Date of Final Completion.
- 6.3** **Assignment** - Contractor shall not, either before or after title to the Work or any constituent element thereof passes to Dofasco, assign or purport to assign (other than to Dofasco) any interest which it might have therein or create any security interest therein or otherwise encumber title to the same.
- 6.4** **License to Dofasco** - To the extent that section 2.5 and section 6.1 do not effectively vest in Dofasco title to the Work or any part thereof or anything discovered, developed or created in connection therewith, Contractor hereby grants to Dofasco an irrevocable royalty-free license in perpetuity, or for such shorter period of time as may be prescribed by law, to disclose to third parties and to use in Dofasco's operations the Work or such part thereof or anything so discovered, developed or created, whether or not the same are patented.

ARTICLE VII INSURANCE**7.1 Liability Insurance - Contractor**

7.1.1 Coverage - Unless otherwise specified by Dofasco in writing, Contractor shall obtain and maintain comprehensive general liability insurance in occurrence form subject to limits of not less than \$2,000,000 (or such greater amount as Dofasco may from time to time require in writing) inclusive per occurrence for bodily injury, death and damage to property, including loss of use thereof, and including coverage for:

- (a) Premises and Operations Liability;
- (b) Products or Completed Operations Liability;
- (c) Blanket Contractual Liability;
- (d) Severability of Interest and Cross Liability;
- (e) Elevator and Hoist Liability;
- (f) Employer's and Contingent Employer's Liability;
- (g) shoring, blasting, excavating, underpinning, demolition, pile driving and caisson work, work below ground surface, tunnelling and grading, as applicable;
- (h) liability with respect to non-owned licensed vehicles;
- (i) Personal Injury Liability arising out of false arrest or detention or imprisonment, malicious prosecution, libel, slander or defamation of character, invasion of privacy, wrongful eviction or wrongful entry;
- (j) Occurrence Property Damage Coverage;
- (k) Contractor's Protective (contingent) Liability with respect to the operations of Subcontractors and Suppliers; and
- (l) coverage for use of radioactive isotopes.

7.1.2 Deductible - Any deductible amounts under policies of liability insurance maintained by Contractor shall be for its account.

7.1.3 Named Insureds - Any liability insurance obtained by Contractor as described herein shall include as Named Insureds Dofasco and Contractor and shall expressly waive the insurer's rights of subrogation against Dofasco.

7.2 Wrap-Up Liability Insurance - Dofasco

7.2.1 Coverage - In cases where Dofasco notifies Contractor in writing that it is providing liability insurance in accordance with this Article, Dofasco shall obtain and maintain the Comprehensive General Liability coverage described in section 7.1.1.

7.2.2 Insureds - All liability insurance policies provided for herein shall include as Insureds Dofasco, Contractor, all engineers, architects, Suppliers, Subcontractors, and anyone employed directly or indirectly by Contractor or its Suppliers or Subcontractors to perform a part or parts of the Work

(but excluding Suppliers whose only function is to supply and/or transfer products to the Site) and shall expressly waive the insurer's rights of subrogation against any Insured thereunder.

- 7.2.3 Deductible** - Wrap-up liability insurance placed by Dofasco shall contain a deductible of \$1,000 for each occurrence of property damage, such deductible to be for the account of Dofasco. Notwithstanding the foregoing, Contractor or any engineer, architect, Supplier or Subcontractor, as the case may be, shall reimburse Dofasco all amounts paid in respect of such deductible if Dofasco, in the reasonable exercise of its judgment, determines that the frequency of occurrences warrants a claim for reimbursement.
- 7.2.4 Additional Coverage** - Contractor shall obtain and maintain such additional liability insurance in excess of the wrap-up liability insurance placed by Dofasco as Dofasco may reasonably request.
- 7.2.5 Duplication** - In the event that liability insurance obtained and maintained by Dofasco is duplicated by Contractor, Contractor's insurance shall be considered as excess of Dofasco's coverage and the cost of same shall be for the account of Contractor.

7.3 Liability Insurance - General Provisions

- 7.3.1 Period of Coverage** - All liability insurance policies provided for herein shall come into force on the commencement of the Work, and shall be maintained continuously throughout the performance of the Work, and with regard to Products or Completed Operations Liability coverage such coverage shall be maintained continuously for a period of 12 months after the Date of Final Completion.
- 7.3.2 Vehicle Insurance** - Contractor shall in all cases provide and maintain liability insurance in respect of all vehicles owned, leased or licensed by it and used in connection with the Work, subject to limits of not less than \$2,000,000 inclusive per occurrence.
- 7.3.3 Aircraft and/or Watercraft Insurance** - Contractor shall in all cases provide and maintain liability insurance in respect of all owned and non-owned aircraft and watercraft used by it in connection with the Work subject to limits of not less than \$2,000,000 per occurrence; provided that:
- (a) Contractor shall add Dofasco as a Named Insured in any Hull insurance policy which is applicable to any watercraft owned by Contractor and used in connection with the Work; and
 - (b) where Dofasco is providing liability insurance under section 7.2.1, such aircraft and watercraft liability insurance shall be in the joint names of Contractor, Dofasco, Subcontractors, and any other Person having an insurable interest in the use and operation of such aircraft or watercraft.

The insurer shall expressly waive its rights of subrogation against anyone insured under any such policy.

7.4 Builder's Risk Property Insurance - Contractor

- 7.4.1 Coverage** - Unless otherwise specified by Dofasco in writing, Contractor shall obtain and maintain property insurance in a form acceptable to Dofasco, insuring the full value of the Work in the amount of the Contract Price and the full value of materials, tools, equipment and other commodities specified to be provided by Dofasco for incorporation into the Work, against All Risks of physical loss or damage subject only to the normal exclusions (which may include exclusions for earthquake or flood). Such coverage shall apply to:

- (a) all property of the Insured or the property of others for which the Insured is responsible, which is to be used in or form a part of the Work;
- (b) loss which occurs at any time during installation, testing, commissioning and subsequent use of machinery, tools and equipment incorporated in the Work (which shall include boilers, pressure vessels and vessels under vacuum) until the Date of Final Completion; and
- (c) damage to the Work caused by an accident and/or the explosion of any boiler or pressure vessel forming part of the Work;

but shall exclude:

- (d) any construction machinery, equipment, temporary structural and other temporary facilities, tools and supplies used in connection with the Work which are not consumed in the course of or incorporated into the Work.

7.4.2 Additional Insureds - Any property insurance obtained by Contractor as described herein shall include as Named Insureds Dofasco and Contractor and as additional Unnamed Insureds any other entity for whose property the Insureds have assumed responsibility in connection with the Work.

7.4.3 Dofasco's Right of Occupation - Contractor's property insurance shall allow Dofasco to occupy the Work or any part thereof during the term of the policy.

7.4.4 Payment of Loss - Contractor's property insurance shall provide that, in the event of a loss:

- (a) Contractor shall act on behalf of Dofasco and itself for the purpose of adjusting the amount of such loss with the insurer, to the satisfaction of Dofasco;
- (b) payment shall be made to Dofasco and Contractor as their respective interests may appear; and
- (c) upon determination of the extent of the loss, Contractor shall immediately proceed to restore the Work and shall be entitled to be reimbursed by Dofasco any amounts expended to restore Dofasco's interest in the Work.

7.4.5 Deductible - Any deductible amounts under policies of property insurance maintained by Contractor shall be for its account.

7.5 Builder's Risk Property Insurance - Dofasco

7.5.1 Coverage - In cases where Dofasco notifies Contractor in writing that it is providing property insurance (Builders Risk) in accordance with this section, Dofasco shall obtain and maintain coverage as described in section 7.4.1. Unless otherwise specified by Dofasco in writing, the limits of the property insurance provided by Dofasco shall be the lesser of the cost of the Project (as estimated by Dofasco) and \$50,000,000.

7.5.2 Payment of Loss - Dofasco's property insurance shall provide that in the event of a loss, payment shall be made to Dofasco or to Contractor as Dofasco may direct and Contractor shall:

- (a) co-operate with Dofasco for the purpose of adjusting the amount of such loss with the insurers;

- (b) upon receiving a work order from the Authorized Representative, immediately proceed to restore the Work; and
- (c) be entitled to receive from Dofasco reimbursement for all amounts expended to restore Dofasco's interest in the Work.

7.5.3 Insureds - Any property insurance as provided for herein shall include as Insureds Dofasco, Contractor, Subcontractors, Suppliers (but excluding Suppliers whose only function is to supply and/or transfer products to the Site) and any other entity having an insurable interest in the Work.

7.5.4 Deductible - Dofasco's property insurance shall contain a deductible for each occurrence of property damage, such deductible to be for the account of Dofasco. Notwithstanding the foregoing, Contractor or any engineer, architect, Supplier or Subcontractor, as the case may be, shall reimburse Dofasco all amounts paid in respect of such deductible if Dofasco, in the reasonable exercise of its judgment, determines that the frequency of occurrences warrants a claim for reimbursement.

7.5.5 Duplication - In the event that property insurance obtained by Dofasco is duplicated by Contractor, Contractor's insurance shall be considered as excess of Dofasco's coverage and the cost of same shall be for the account of Contractor.

7.6 Property Insurance - General Provisions

7.6.1 Construction Tool & Equipment Coverage - Contractor shall in any event obtain and maintain and shall be responsible for ensuring that each Subcontractor obtains and maintains All Risks insurance covering all construction tools and equipment owned or rented by Contractor and its Subcontractors or for which Contractor or its Subcontractors may be responsible. In the event of loss or damage to such tools or equipment or any part thereof Contractor or its Subcontractors, as applicable, shall if requested by Dofasco in writing forthwith replace the damaged or destroyed tools or equipment.

7.6.2 Subrogation - All insurance policies described in sections 7.4.1, 7.5.1 and 7.6.1 shall contain an express waiver of the insurer's rights of subrogation against Dofasco or any Insured under the described policies.

7.6.3 Period of Coverage - All insurance policies described in sections 7.4.1, 7.5.1 and 7.6.1 shall come into force on the commencement of the Work and shall be maintained continuously throughout the performance of the Work until the Date of Final Completion.

7.7 All Insurances - General Provisions

7.7.1 Damage to Property/Bodily Injury - Contractor shall be fully liable for and shall indemnify Dofasco in respect of any acts, omissions or neglect of itself, its agents and employees, its Subcontractors or Suppliers or any other Person for whom it is responsible if such acts, omissions or neglect result in damage to property owned by Dofasco or any other Person or in bodily injury or death to any Person, against which (in any such case) Dofasco is not insured.

7.7.2 Liability re: Borrowed Equipment - In the event that Dofasco's equipment or personnel shall be used by Contractor in performing any aspect of the Work, Contractor shall be fully liable for and shall indemnify Dofasco in respect of any loss whatsoever, including damage to property, bodily injury or death suffered or occasioned by the use of such equipment or personnel.

7.7.3 Other Insurance - Contractor shall obtain and maintain, and shall be responsible for ensuring that its Subcontractors and Suppliers (but excluding Suppliers whose only function is to supply

and/or transfer products to the Site) obtain and maintain such additional insurance as Dofasco may from time to time require in writing or which Contractor is required by law to provide.

7.7.4 Endorsement - All insurance policies which are required to be provided by this ARTICLE VII shall contain an endorsement in the following form:

"It is understood and agreed that the coverage provided by this insurance policy will not be changed or amended in any way or cancelled until at least sixty (60) calendar days after written notice of such change or cancellation shall have been given to all Named Insureds."

7.7.5 Evidence of Insurance - Where Contractor is obligated by this ARTICLE VII to obtain and maintain insurance, Contractor shall provide Dofasco with evidence of all such insurance prior to the commencement of the Work and, if requested in writing, shall promptly provide Dofasco with a certified true copy of each such insurance policy. Such insurance shall be in such form and with such insurers as are acceptable to Dofasco. Where Dofasco is obligated by this ARTICLE VII to obtain and maintain insurance Dofasco shall, at Contractor's request, provide Contractor with evidence of such insurance in the form of certificates and shall also, at Contractor's request, allow Contractor to review the relevant insurance policies at Dofasco's premises.

7.7.6 Notice of Loss - Contractor shall give, and shall be responsible for ensuring that its Subcontractors give, notice to Dofasco's Insurance Department as soon as practically possible of any loss or damage occurring to the Work which may give rise to a claim under any insurance policy carried by Dofasco; and Contractor shall furnish Dofasco's insurer in a timely fashion with all documentation required under the policy for the settlement of any claim. If Contractor's or a Subcontractor's failure to give prompt notice of loss or damage to Dofasco results in Dofasco being unable to recover for the loss or damage under its insurance policies, Contractor shall be liable to Dofasco for all costs incurred by Dofasco in connection with such loss or damage which would otherwise have been insured against.

ARTICLE VIII CONTRACTOR'S WARRANTIES

8.1 Warranty Respecting Contractor - Contractor warrants to and covenants and agrees with Dofasco that:

- (a) it shall perform the Work in accordance and in compliance with the provisions of the Contract Documents;
- (b) all material and equipment supplied by Contractor (regardless of when it was purchased) and all engineering, construction and other work performed directly by Contractor (which term shall include all employees of Contractor and of any company or Person associated or affiliated with Contractor and all other Persons employed by Contractor without outside supervision) shall be free from defects and deficiencies and shall comply with the Contract Documents;
- (c) all equipment and material shall be new and shall conform to the applicable specifications of the Canadian Standards Association and to all other applicable legislation, standards and codes;
- (d) Contractor will remedy or cause to be remedied without cost to Dofasco but in a manner approved by the Authorized Representative any defects, deficiencies or non-compliance discovered within the Warranty Period (or the Extended Warranty Period (as defined below), if applicable) including, without limitation, any failure to meet any performance specifications relating to the Work which form part of the Contract Documents, and shall at the option of the Authorized Representative correct or replace without cost to Dofasco any construction work (including labour and materials) forming part of the Work or the Project (including any dismantling and reassembly thereof), the correction or replacement of which is required by reason of any breach of Contractor's warranty contained in paragraph (a) above; and
- (e) in the event that Contractor is required to perform under paragraph (d) above, a second warranty period (the "Extended Warranty Period") with respect to the defective, deficient or non-conforming work or the construction work corrected or replaced shall run for a period commencing on the day that such corrections or replacements are completed by Contractor and accepted by the Authorized Representative and ending on the later of one year thereafter and the expiry of the Warranty Period.

8.2 Warranty Respecting Third Parties - Contractor covenants with Dofasco that it shall obtain from Suppliers and Subcontractors a warranty in the form annexed hereto as 0 and hereby assigns to Dofasco the benefits of all such warranties; provided that if Contractor, acting in good faith and after exercising due diligence, is unable to obtain such warranty, Contractor may obtain such other warranty as shall have been given prior written approval by the Authorized Representative.

8.3 General Warranty - If any defect in equipment, materials or workmanship in any portion of the Work furnished or performed by a Supplier or Subcontractor shall be discovered within the Warranty Period (or the Extended Warranty Period, if applicable) or if within the Warranty Period (or the extended warranty period, if applicable) the Work or any part or parts thereof are found to be defective or to fail to conform to the Contract Documents, and such defects or failure (i) are attributable to the failure of Contractor to exercise reasonable care in the performance of its obligations under the Contract Documents and (ii) are not encompassed by the warranty described in section 8.1 or by the warranty received from any Subcontractor or Supplier under section 8.2, then the cost of correcting such defective material or workmanship and damage to any other part or parts of the Project resulting from such defects or the corrections thereto shall be borne by Contractor. In determining whether such failure or defect is the result of a failure by Contractor to exercise reasonable care, Contractor shall have the burden of proving that it

exercised such a degree of care, and the standard of reasonable care for this purpose shall be that degree of care normally exercised by contractors of an equivalent stature in the performance of comparable work.

8.4 Effect of Warranties - The warranties and remedies given in sections 8.1 and 8.3:

- (a) are in addition to, and do not substitute for or detract from, any other warranties or remedies contained elsewhere in the General Conditions or in any other Contract Documents or implied or required by or available at law;
- (b) shall survive any examinations, inspections and payments made by Dofasco or approvals or certificates given by Dofasco, and no such examination, inspection, payment or certificate shall or shall be deemed to relieve Contractor from the obligation to perform under sections 8.1 and 8.3 or to operate as a waiver of Dofasco's right to pursue any such remedies; and
- (c) shall survive any termination of the Contract with respect to all parts of the Work completed prior to the effective date of termination and all parts of the Work subsequently completed and delivered in accordance with the terms of termination, provided that in the case of termination, all such warranties and indemnities shall expire on the day which is 12 months after the last part of the Work is completed and delivered to Dofasco.

8.5 Notification - Dofasco shall notify Contractor immediately of any defects in the Work which Dofasco considers to be a breach of the warranties in sections 8.1 or 8.3 or of a Subcontractor's or Supplier's warranty, when such defects become apparent to Dofasco.

8.6 Correction by Dofasco - Dofasco may, at its option, cause its employees or any other Person to correct or replace any defects or deficiencies or non-compliance in the Work and any defects or deficiencies on the Project, the correction or replacement of which is required by reason of any breach of Contractor's warranty contained in sections 8.1 or 8.3, and Contractor shall be responsible (as between Dofasco and Contractor) to such other Person for any costs incurred by it to effect such corrections or replacements and shall reimburse Dofasco for any costs incurred by Dofasco as a result of either a third party or Dofasco effecting such corrections or replacements. No action by Dofasco pursuant to this section 8.6 shall limit or otherwise affect Contractor's warranty or obligations under section 8.1 or 8.3 and the provisions of paragraph (e) of section 8.1 shall apply, with such modifications to the details are necessary in the circumstances, to any component or part of the Work corrected or replaced pursuant to this section 8.6.

8.7 Limitation of Liability - Notwithstanding any other provision of these General Conditions:

- (a) Contractor shall in no event be liable to Dofasco for consequential, special, contingent or penal damages (including, but not limited to, loss of production or profit) unless such damages result from the negligence of Contractor, its Subcontractors or Suppliers or their agents or employees or any other Person for whom they are responsible at law; and
- (b) Contractor's aggregate liability to Dofasco for any claim for loss or damages arising out of or connected with this Contract shall in no case exceed the greater of (i) the Contract Price and (ii) any insurance proceeds which are payable to Contractor or Dofasco under any insurance policies maintained by Contractor relating to the Work.

ARTICLE IX CHANGE ORDERS

- 9.1 Emergencies** - If in his or her opinion such action is necessary to ensure the safety of life or of the Work or of property adjoining the Site, the Authorized Representative shall be entitled to (i) stop the progress of the Work or (ii) make changes to the Work, provided that such changes must be confirmed to Contractor in writing within a reasonable time.
- 9.2 Dofasco's Right to Change** - The Authorized Representative may at any time and from time to time, in the exercise of his or her discretion and without invalidating the Contract, request changes to the Work (which may be modifications, additions or deletions) as described in the Contract Documents at that date. No such change shall be made otherwise than on the basis of an authorization in writing from the Authorized Representative, except in an emergency as described in section 9.1. Contractor shall not proceed with the change to the Work so requested prior to receiving written acceptance of such change pursuant to section 3.19.2.2, unless Dofasco's request for such change expressly provides that the change may be made without further authorization. If Contractor has proceeded with a change to the Work prior to receiving written acceptance of such change, and Dofasco has not expressly provided that the change may proceed without written acceptance, no reimbursement for any such unauthorized Work shall be made to Contractor.
- 9.2.1 Response by Contractor** - Contractor shall notify the Authorized Representative, within such number of days as is specified by the Authorized Representative (or, in the absence of such specification, within two (2) working days of receipt from the Authorized Representative of a written or verbal request for a change to the Work) (i) whether a change requested by the Authorized Representative pursuant to section 9.2 constitutes a change in the scope of the Work, (ii) an estimate of the cost of or credit for effecting such change, if any, (which credit shall include, with a "firm price" contract, a proportionate credit for reduction of corollary overhead and profit) which cost or credit shall be quoted in the same commercial form as the original Contract unless otherwise specified in writing by the Authorized Representative, and shall be submitted in such form, with such pricing breakdown and with such other supporting documentation and information as the Authorized Representative may require to fully evaluate the price and schedule impact of the change and (iii) any effect such change will have on the scheduled progress of the Work.
- 9.2.2 Effect of Change** - If Contractor does not so notify the Authorized Representative within the applicable period, it shall not thereafter request or receive a change in the Contract Price to reflect a change requested by the Authorized Representative pursuant to section 9.2 and it shall be deemed to have represented to Dofasco that the scheduled completion of the Work will be unaffected. If the Authorized Representative accepts any estimate of cost or credit delivered pursuant to section 9.2.1 or any rescheduling, (s)he shall advise Contractor in writing of his or her acceptance and the Contract Price and/or the schedule for Completion of the Work in the Construction Plan shall be adjusted accordingly. If the Authorized Representative and Contractor cannot agree on such estimate or rescheduling, the matter shall be submitted to arbitration pursuant to ARTICLE XIV.
- 9.3 Variations Which are Not Changes in Scope** - Notwithstanding sections 9.1 through 9.2.2 above, any modifications, substitutions or alterations required by the Authorized Representative or proposed by Contractor to remedy the Work or any part thereof which are necessary or desirable because of (i) a default by Contractor in the performance of its obligations under the Contract or (ii) an adjustment to how the Work is to be performed, shall not be deemed to be a change in scope and shall not affect the Contract Price or Scheduled Completion Date (if any).

- 9.4 Monthly Report** - If requested by the Authorized Representative, Contractor shall send to the Authorized Representative within five (5) working days after the end of each month an account giving the full particulars of every change in the original scope of the Work which has been approved by Dofasco and every such change in scope which is currently under consideration by Dofasco which has not yet been approved.

ARTICLE X COMPUTATION OF CONTRACT PRICE

10.1 Definitions - In and for the purpose of the Contract the following terms shall have the meanings ascribed thereto:

"Adjusted Cost" shall mean the aggregate of the Estimated Cost and the estimated increases or decreases thereto accepted by the Purchasing Representative pursuant to section 9.2.2, as a result of agreed to changes to the original scope of the Work, exclusive of any amount payable as a Fee or on account of the Reimbursable Costs listed in Part II C of EXHIBIT A;

"Estimated Cost" shall mean Contractor's estimate of the Reimbursable Costs to be incurred by it in performing the Work as set out in Contractor's Bid Response, exclusive of any amount payable as a Fee, of duties and taxes, and of any adjustments pursuant to section 9.2.2;

"Fee" shall mean either Fixed Fee or Percentage Fee, as the context requires, which includes Corporate Overhead and Profit, as detailed in EXHIBIT A;

"Fixed Fee" shall mean a Fee charged by Contractor which is expressed as a dollar amount;

"Percentage Fee" shall mean a Fee charged by Contractor which is expressed as a percentage and which shall be the Percentage Fee most recently filed with and approved by Dofasco or, in the event that a different Percentage Fee was negotiated for the Contract, such negotiated Percentage Fee;

"Reimbursable Costs" shall mean those costs so identified the Contract Documents and in EXHIBIT A hereto.

10.2 Method of Computation - The Contract Price shall be computed in accordance with this ARTICLE X.

10.3 Firm Price Contract - If the Dofasco Purchase Order provides that the Work is to be performed on a "firm price" basis, the Contract Price shall be the aggregate of the contract price indicated on the Dofasco Purchase Order, as adjusted pursuant to section 9.2.2.

10.4 Reimbursable Cost Contract

10.4.1 Contract Price - If the Dofasco Purchase Order provides that the Work is to be performed on a "reimbursable cost" basis, the Contract Price shall be equal to the aggregate of:

- (a) Reimbursable Costs incurred by Contractor in performing the Work; and
- (b) the Fee (as defined by Dofasco) stipulated in the Dofasco Purchase Order.

If the Fee stipulated in the Dofasco Purchase Order is a Percentage Fee, then the amount of the Fee shall be calculated using the applicable percentage, in accordance with and subject to EXHIBIT A, and in all cases the Fee shall be calculated in accordance with and subject to the following provisions of this section 10.4.

10.4.2 Adjustment to Fixed Fee - If the Contract provides that Contractor will be paid a Fixed Fee, then Contractor shall be paid on account of its Fee an amount equal to the Fee so stipulated; provided that:

- (a) if the Adjusted Cost to Contractor of completing the Work is more than 115% of the Estimated Cost, Contractor may request that Dofasco pay an additional amount on account of the Fee, which additional amount shall not exceed the product of:

$$\frac{\text{Quoted Fixed Fee}}{\text{Estimated Cost}} \times (\text{Adjusted Cost} - 1.15 \text{ of Estimated Cost})$$

- (b) if the Adjusted Cost to Contractor of completing the Work is less than 85% of the Estimated Cost, Dofasco may at its option reduce the quoted Fixed Fee, provided that in no event shall the amount of such reduction exceed the product of:

$$\frac{\text{Quoted Fixed Fee}}{\text{Estimated Cost}} \times (\text{Adjusted Cost} - .85 \text{ of Estimated Cost})$$

Adjustment to Fixed Fee is to be done through reconciliation at completion of Contract.

- 10.4.3 Adjustment to Percentage Fee** - If the Contract provides that Contractor will be paid a Percentage Fee, then Contractor shall be paid on account of its Fee an amount equal to the stipulated percentage multiplied by the Reimbursable Costs provided that if the Adjusted Cost to Contractor of completing the Work is more than 125% of the Estimated Cost, the Authorized Representative may request Contractor to negotiate an equitable reduction of the percentage figure used in calculating the Fee and shall apply such reduced percentage in calculating all or any part of the Fee as may be agreed with Contractor.
- 10.4.4 Adjustment of Maximum** - If Contractor is required to guarantee a maximum quoted Contract Price and Contractor incurs Reimbursable Costs which have been accepted by the Authorized Representative pursuant to section 9.2.2, then Dofasco shall pay to Contractor an amount equal to Dofasco's and Contractor's agreed estimate of the Reimbursable Costs to be incurred by it which are directly attributable to such change of scope together with such Fee as the Purchasing Representative and Contractor may agree.
- 10.4.5 Deviation from Fee** - Contractor shall not be entitled to be paid any Fee other than the Fee stipulated in the Dofasco Purchase Order unless such adjusted Fee has been agreed to in writing by the Purchasing Representative or otherwise determined in accordance with this ARTICLE X.
- 10.4.6 Resort to Arbitration** - In the event that Contractor and the Authorized Representative cannot agree on the adjustment of the Fee the Fee shall be determined by arbitration in accordance with ARTICLE XIV.
- 10.5 Rate Schedules** - Dofasco reserves the right to change any Rate that Dofasco has approved, with retroactive effect to the original effective date of that Rate, if that Rate is determined by Dofasco, acting reasonably, to:
- (a) contain, or have been based on information or data that contain, an error, omission or mistake; and/or
- (b) have been based on information or data resulting from a misrepresentation (whether innocent or otherwise) by Contractor or those for whom it is in law responsible.

ARTICLE XI PAYMENT

11.1 **Invoicing**

11.1.1 **Monthly Invoices** - All payments to Contractor will be based on invoices prepared by Contractor in accordance with the Contract Documents. Unless otherwise stated in the Contract Documents, Contractor shall submit to Dofasco one invoice per month with respect to each Contract it is performing for Dofasco; provided that Contractor shall submit an additional invoice in accordance with section 11.7.3 for any Non-refundable Taxes and Customs Duties (as defined in section 11.7), unless the Contract Price was established on a "taxes included" basis. Dofasco reserves the right to change the invoice process from time to time in its sole discretion.

11.1.2 **Currency** - Unless otherwise stated in the Dofasco Purchase Order, invoices shall be rendered and all payments made in Canadian funds.

11.1.3 **Documentation** - No payments shall be made to Contractor except on the basis of original invoices submitted by Contractor together with (i) a detailed breakdown of the amounts of such invoices in a form acceptable to the Purchasing Representative and (ii) such supporting documentation as Dofasco may reasonably require to support the amount for which payment is requested, approved by the Authorized Representative. If the Authorized Representative determines that any item included in an invoice is not sufficiently supported, Contractor shall provide such additional supporting documentation for the item(s) in question as the Authorized Representative may request. Supporting documentation includes, but is not limited to, Electronic Timesheet release summaries or a summary that provides a breakdown of labour, material, and equipment, third party rental invoices and rental slips, material invoices and packing slips, subcontractor invoices and timesheets. All packing slips and rental slips must be signed by the Authorized Representative or the amount paid in respect of the invoice will be reduced by the amount attributed to the material or equipment to which such packing slips or rental slips relate.

Each invoice must be accompanied by a completed Contractor Invoice Disclosure form in the form of EXHIBIT F.

11.2 **Components of Invoice - Firm Price** - If the Dofasco Purchase Order provides that the Work is to be performed on a "firm price" basis and:

- (a) if the Contract Documents establish "milestones" or recognizable degrees of completion, and assign a value thereto, Contractor shall invoice Dofasco monthly an amount equal to the incremental value assigned to any verifiable milestones achieved by Contractor during the month to which the invoice relates;
- (b) in all other cases, Contractor shall invoice Dofasco monthly that percentage of the Contract Price (exclusive of any adjustments pursuant to ARTICLE IX, except as provided in section 11.4) which is equal to the percentage of the Work performed in the preceding month; and
- (c) as provided in section 11.7.2, the amount of Goods and Services Tax/Harmonized Sales Tax applicable in respect of any invoiced amount shall be separately identified.

11.3 **Components of Invoice - Reimbursable Cost** - If the Dofasco Purchase Order provides that the Work is being performed on a "reimbursable cost" basis:

11.3.1 **Reimbursable Costs** - Each invoice shall include all Reimbursable Costs incurred by Contractor in the immediately preceding invoicing period which are included in the Contract Price pursuant to ARTICLE X, subject to section 11.4, and as provided for in section 11.7.2, shall separately identify the amount of Goods and Services Tax/Harmonized Sales Tax applicable in respect of

any invoiced amount. Each invoice shall indicate the Rate from the Rates Engine (including the Rate Schedule Number(s), Version Number(s) and Rate Code) that applies to the invoice.

11.3.2 Fixed Fee - If all or a part of the Fee payable to Contractor is expressed as a Fixed Fee:

- (a) the portion of such dollar amount which is earned in each month shall be equal to $A \times B/C$ where:

A is the quoted Fixed Fee;

B is the Reimbursable Costs incurred in that month in performing the Work (exclusive of any Reimbursable Costs which result from a change in the scope of the Work) which are accepted by the Authorized Representative; and

C is the Estimated Cost of the Work, as may be amended from time to time;

until Contractor has received pursuant to this paragraph (a) an amount equal to 90% of the quoted Fixed Fee; provided that:

- (i) if the Fixed Fee is increased pursuant to paragraph (a) of section 10.4.2, Dofasco and Contractor shall reconcile the amount of the adjustment to the Fixed Fee at Contract completion.
- (ii) if the Fixed Fee is decreased pursuant to paragraph (b) of section 10.4.2, the Authorized Representative and Contractor shall negotiate in good faith a reasonable method for invoicing any balance of the Fee payable; and

- (b) the amount of the Fee charged on any monthly invoice will be shown as a separate item on that invoice.

11.3.3 Percentage Fee - If all or a part of the Fee payable to Contractor is expressed as a Percentage Fee:

- (a) the amount payable as Fee shall be calculated on the basis of Reimbursable Costs incurred by Contractor in the preceding month, subject to section 11.4, which are accepted by the Authorized Representative;
- (b) if the percentage used in calculating the Percentage Fee is reduced pursuant to section 10.4.3, the Authorized Representative and Contractor shall negotiate in good faith a reasonable method for invoicing any balance of the Fee payable.

11.4 Changes in Scope - If a change in scope of the Work has been initiated by a Dofasco change order:

- (a) no amount may be included in Contractor's invoice unless the work described in the change order has been 100% completed; and
- (b) any invoice which claims compensation for a change in scope of the Work must separately identify the amount claimed, the Dofasco change order number, the corresponding Contractor change order number and the Dofasco Purchase Order number.

11.5 Payment of Invoices - Subject to the other provisions of this Article and of ARTICLE VII:

11.5.1 Partial Payment - Dofasco shall pay Contractor an amount equal to the aggregate of (i) 90% of the amount of each invoice exclusive of the amount of the Goods and Services Tax/Harmonized Sales Tax shown thereon and (ii) 100% of the amount of the Goods and Services Tax/Harmonized Sales Tax, taken on the 90% of each invoice, shown thereon, within 30 calendar days of receipt of such invoice by Dofasco, unless Dofasco disputes any amount claimed in the invoice or rejects any claims as insufficiently documented, in which case Dofasco shall pay only 90% of the amount of the invoice (exclusive of the amount of the Goods and Services Tax/Harmonized Sales Tax shown thereon) which is not disputed and 100% of the amount of the Goods and Services Tax/Harmonized Sales Tax which relates thereto, and further provided that Dofasco shall not, except in accordance with section 11.5.2, be obligated to pay to Contractor an amount in excess of the aggregate of (i) 90% of the Contract Price (exclusive of any non-refundable taxes included therein, unless the Contract Price was established on a "taxes included" basis) and (ii) the amount payable pursuant to section 11.7.4.

11.5.2 Payment of Balance - The aggregate of all amounts withheld pursuant to section 11.5.1 (other than amounts withheld on account of disputes or rejections) shall be invoiced separately by Contractor and supported by a signed Completion Certificate and shall be paid on the later of 30 days after receipt of such invoice by Dofasco and 45 days after the Date of Final Completion, unless otherwise stipulated in some other Contract Document.

11.5.3 Payment of Invoice – Milestone Payments

- (a) Within ten (10) working days of receipt by Dofasco of each invoice, Dofasco shall either confirm to Contractor its acceptance thereof or inform Contractor of the extent of any disagreement with the contents of the invoice.
- (b) Unless Dofasco has advised Contractor in accordance with subsection (a) of a disagreement with an invoice, the Invoice shall be paid by Dofasco within thirty (30) calendar days of receipt of the invoice, subject to subsections (c) and (d).
- (c) Dofasco shall not be required to pay any amount in respect of completion of a milestone if there remains uncompleted any other milestone in respect of the Work which was scheduled, in accordance with the milestone payment schedule as amended from time to time with the consent of Dofasco and Contractor, to be completed prior to the said milestone. Such amount shall be paid by the Dofasco by the later of (i) the date of completion of all prior scheduled milestones, and (ii) thirty (30) days after receipt by Dofasco of the invoice in respect of completion of said milestone.
- (d) In the event that a milestone is not completed by the date scheduled for completion (as amended from time to time with the consent of Dofasco and Contractor), the amount in respect of completion of that milestone shall be paid by Dofasco by the later of (i) sixty (60) days after completion of that milestone and (ii) thirty (30) days after receipt by Dofasco of the invoice in respect of completion of that milestone.
- (e) If changes to the schedule in the Construction Plan require changes to the milestone payment schedule, Dofasco may, at Contractor's request and in Dofasco's sole discretion, waive the provisions of (c) and (d).

11.6 Completion Certificates - Final invoices must be accompanied by a Completion Certificate. The Certificate must be filled out by Contractor, with a description of the Work, the Dofasco Purchase Order number, and the date the Work was completed. The Certificate must be signed by the Contractor, and the Contractor must obtain approval from the Authorized Representative and the Purchasing Representative. Dofasco reserves the right not approve the completion certificate unless (i) Contractor has first undergone a Dofasco Health and Safety performance evaluation (ii)

Contractor has delivered to Dofasco all "as built" drawings and (iii) the Work has been completed in accordance with the Contract Documents. Dofasco reserves the right not to release any amounts of unpaid amounts held back under this ARTICLE XI ("holdback") until the later of 45 calendar days from the date on which Dofasco approves the completion certificate and 30 calendar days from receipt of final invoice. Invoices on account of holdback will not be paid by Dofasco and will be returned to Contractor unless a completed completion certificate is attached. Dofasco will not apply holdback on account of Taxes.

11.7 Invoicing and Payment of Taxes and Duties

11.7.1 Definitions - In this section 11.7.1:

(a) "**Taxes**" means:

- (i) if the Dofasco Purchase Order provides that the Work is to be performed on a "reimbursable cost" basis, all retail sales taxes charged on items which are Reimbursable Costs or which are materials and equipment incorporated into the Work or used directly in the placement of the Work; and
- (ii) in all other cases, all retail sales taxes charged on the cost of permanent materials and equipment which are incorporated in the Work and remain on the Site after completion of the Work;

(b) "**Refundable Taxes**" means Taxes, the amount of which is refundable under applicable law or which are under any circumstances refunded to Contractor;

(c) "**Non-refundable Taxes**" means all Taxes which are not Refundable Taxes;

(d) "**Customs Duties**" means all importation charges on materials and equipment manufactured outside Canada for incorporation into the Work; and

(e) "**Goods and Service Tax/Harmonized Sales Tax**" are as described in the Excise Tax Act Canada and are applied on all amounts inclusive on all Non-refundable Taxes, which the Contractor is required to pay under applicable law.

11.7.2 Goods and Services Tax / Harmonized Sales Tax - All invoices rendered by Contractor shall set out his registration number under the federal Excise Tax Act, and shall identify as a separate item the amount of Goods and Services Tax/Harmonized Sales Tax being charged to Dofasco with respect to such invoice. In the event that Contractor or any of his Subcontractors or Suppliers elects not to become a registrant under the federal Excise Tax Act, and as a result is unable to obtain an input tax credit for Goods and Services Tax/Harmonized Sales Tax paid, Dofasco shall not compensate Contractor or such Subcontractor or Supplier for the tax so paid.

11.7.3 Invoicing of Non-refundable Taxes and Customs Duties - Contractor shall invoice Dofasco monthly (or with such other frequency as Dofasco and Contractor may agree) for the amount of all Non-refundable Taxes and Customs Duties paid by Contractor or reimbursed by Contractor to Subcontractors or Suppliers during the period ended on the date of each such invoice, together with the amount of all Goods and Services Tax/Harmonized Sales Tax thereon separately identified, and shall submit with such invoices all such documentation and information as Dofasco may require from time to time to enable Dofasco to identify the equipment and materials in respect of which such Taxes were paid and to satisfy itself that both the payment and the amount thereof were proper and necessary.

11.7.4 Payment of Non-refundable Taxes and Customs Duties - Dofasco shall, within 30 days of receiving each of the invoices and other material to be submitted by Contractor pursuant to section 11.7.3 (or with such other frequency as Dofasco and Contractor may agree) pay to Contractor the amount of each such invoice or, in the event that Dofasco shall in good faith be disputing a portion thereof, shall pay to Contractor the portion thereof which is not in dispute.

11.7.5 Refundable Taxes - With respect to all Refundable Taxes:

- (a) Contractor shall pay or shall cause to be paid all Refundable Taxes and shall indemnify and save Dofasco harmless from and against all losses, costs and damages suffered or incurred as the result of any breach of Contractor's obligations to pay or cause the same to be paid;
- (b) Contractor shall file or shall cause to be filed all such letters of intent and other documents as may be required to preserve the right to obtain any refund or refunds after the expiry of any period prescribed with respect to the same;
- (c) subject to paragraph (b), Dofasco shall cooperate with Contractor and its Subcontractors and Suppliers to the extent necessary to permit them to obtain all such refunds promptly and in any event within any period prescribed by law for obtaining the same; and
- (d) in the event that Dofasco shall make a payment to Contractor with respect to Taxes which were considered to be Non-refundable Taxes, and such Taxes are subsequently refunded to Contractor, Contractor shall forthwith reimburse to Dofasco all payments made by Dofasco to Contractor with respect to such Taxes.

11.7.6 Non-Resident Contractors - All non-resident Contractors, not registered to collect Ontario Retail Sales Tax (ORST), shall register with the Ontario Retail Sales Tax Branch and post a guarantee equal to 4% of the total of each Ontario contract; refer to section 39(3) of the Retail Sales Tax Act. A copy of this bond must be forwarded to Dofasco at the commencement of the Contract. If this guarantee is not posted by the Contractor, Dofasco is required by law to, and will, deduct 4% from all invoices.

11.7.7 Administrative Monetary Penalty System (AMPS) - Contractor shall identify on commercial invoices/shipping documents, the "Country of Origin" being the 'country of manufacture' and tariff number on all goods shipped to Dofasco. Failure to do so, resulting in any duties, interest, penalties, or other amount assessed or levied against Dofasco as a result of improper declaration of tariff treatment due to invalid country of origin or tariff number as required above, will entitle Dofasco to deduct any such amount from any account outstanding between Dofasco and Contractor/Supplier. This remedy of Dofasco shall be in addition and not in substitution of any other remedies available to Dofasco at law.

If Dofasco incurs any financial penalty under the Canada Border Services Agency (CBSA) Administrative Monetary Penalty System (AMPS), as the result of inaccurate/erroneous information being provided by the Contractor/Supplier or its Subcontractors/Sub suppliers, the penalty will be charged back to the account of the Contractor/Supplier. Additional information regarding AMPS is available on the CBSA website.

11.8 Maximum Contract Price - Notwithstanding anything else contained herein, if the Contract Documents stipulate a maximum quoted Contract Price, no amount will be paid to Contractor in excess of the Contract Price unless such maximum amount is adjusted in accordance with the provisions of section 10.4.6.

- 11.9 Withholding Tax** - All amounts payable to Contractor pursuant to the Contract shall be reduced by the amount of any withholding tax paid to the Government of Canada, in which event Dofasco shall deliver to Contractor a certificate establishing the payment thereof on Contractor's behalf.
- 11.10 Liens Against Dofasco** - Notwithstanding any other provision of the Contract Documents, Dofasco shall not be required to pay all or any portion of the Contract Price which at any time has not yet been paid to Contractor unless and until Contractor, if required by Dofasco, shall furnish a complete release of all liens arising out of the Work (other than its own) or in lieu thereof a bond satisfactory to Dofasco indemnifying Dofasco against any claim under such liens.
- 11.11 Statutory Declaration** - If requested by Dofasco,, the Contractor shall, and shall cause any of its Subcontractors and Suppliers, to provide to Dofasco, statutory declaration(s) that all their respective Subcontractors and Suppliers invoices have been paid, prior to Contractor receiving payment on account of any invoice.
- 11.12 Set-Off** - Notwithstanding any other provision of the Contract Documents, Dofasco and any company which is affiliated with Dofasco (within the meaning of the Canada Business Corporations Act) shall be entitled to deduct from the amount of any payment otherwise due to Contractor (whether under the Contract or under any other agreement or for any other reason whatsoever) the aggregate of:
- (a) subject to section 8.7, (i) all costs incurred by Dofasco in testing the Work, if such tests indicate that Contractor is in breach of its covenants, including without limitation any of its warranties; (ii) all other costs, expenses, losses and damages suffered or incurred by Dofasco as a result of Contractor breaching any of its covenants or defaulting on any of its obligations under the Contract, including costs and expenses incurred by Dofasco in performing or causing to be performed by others Contractor's covenants and obligations hereunder; and
 - (b) any debt owed by Contractor or any company affiliated with Contractor (within the meaning of the Canada Business Corporations Act) to Dofasco or any company affiliated with Dofasco (within the meaning of the Canada Business Corporations Act) under any other agreement or for any other reason whatsoever.
- 11.13 Timesheets** - All Reimbursable Cost Work, including Subcontracted Work, covering labour, material, and/or equipment must be recorded on Dofasco Contractor Daily Timesheets and, must be completed and submitted to the Authorized Representative for approval within two (2) working days of the Work being performed.

The Authorized Representative will approve or reject timesheets within two (2) working days of the timesheet being submitted.

All Subcontractor information must be recorded on a separate Dofasco Contractor timesheet and attached to the Contractor's Dofasco timesheet when submitted to the Authorized Representative for approval. Subcontractor timesheets are to be treated in the same manner as supporting documentation; the Authorized Representative must also review and, if it is acceptable, sign the document before payment of any invoice to which the timesheet relates.

The timesheet must be reviewed and, if acceptable, approved by the Authorized Representative, and then submitted to the Purchasing Department with the Contractor's invoice and all other accompanying supporting documentation.

Reimbursement of labour will be based on pre-approved rates at Dofasco. Any additional expenses must be accompanied by supporting documentation.

- 11.13.1 Electronic Timesheets** - If the Contract Documents state that electronic timesheets are to be used, Contractor shall submit all such timesheets in connection with the Work using Dofasco's Electronic Timesheets system found at <https://ec.dofasco.ca/Suppliers>. Dofasco will not accept any other form of electronic timesheet.
- 11.13.2 Manual Timesheets** - If the Contract Documents state that manual timesheets are to be used; the Contractor shall submit all timesheets in connection with the Work using the Dofasco Contractor Timesheet, as may be revised by Dofasco from time to time. Dofasco will not accept any other form of manual timesheet.

ARTICLE XII DEFECTIVE OR DELAYED WORK

12.1 Notice of Default - Dofasco may notify Contractor in writing that it is in default of its obligations and instruct it to correct the default, delay or failure aforesaid within five working days of receiving the notice, if Contractor:

- (a) neglects to perform the Work properly or delays such execution or fails to perform diligently any obligations under the Contract Documents; or
- (b) fails forthwith to make payments when due to Subcontractors, Suppliers or employees; or
- (c) disregards Dofasco's instructions or any laws, rules, regulations or codes relating to the Work; or
- (d) is otherwise in breach of any of its obligations hereunder;

Contractor shall, subject to the provisions of section 12.2, correct any such default forthwith upon receipt of such notice.

12.2 Compliance with Notice - If the correction of the default cannot be completed within the five working days specified, Contractor shall be considered to be in compliance with Dofasco's instructions if it:

- (a) commences the correction of the default within such specified time;
- (b) provides Dofasco with a schedule for such correction acceptable to the Authorized Representative; and
- (c) completes the correction in accordance with such schedule.

12.3 Failure to Comply - If Contractor fails to comply with the provisions of sections 12.1 or, if applicable, section 12.2, Dofasco may, without prejudice to any other right or remedy it may have, correct such default and deduct the full cost of such correction from the Contract Price otherwise payable to Contractor.

12.4 Extension of Time - Notwithstanding any of the foregoing provisions of this ARTICLE XII, if Contractor is delayed in the performance of the Work by any act, omission or neglect of Dofasco or by labour disputes, strikes, lockouts, fire, unusual delay by common carriers or unavoidable casualties or by any loss which has been insured against in accordance with sections 7.4, 7.5 or 7.6 or by any other cause of any kind whatsoever beyond Contractor's reasonable control, then the Scheduled Completion Date shall be extended for such reasonable time as the Authorized Representative may decide in consultation with Contractor and, subject to ARTICLE XIII, Dofasco shall not be entitled to perform the Work. No extension shall be made for delay:

- (a) resulting from an act or omission or otherwise through the negligence or fault of Contractor or a Subcontractor or Supplier or any Person in the employ of a Subcontractor or Supplier;
- (b) if written notice of the delay is given by Contractor to the Authorized Representative more than five working days after its commencement, providing however, that in the case of a continuing cause of delay only one notice shall be necessary;

- (c) if Contractor shall attribute such delay to Dofasco's failure to provide Contractor with instructions and less than 10 working days shall have elapsed from the time such instructions are requested and the time they are received; or
- (d) if Contractor shall attribute its inability to meet the Scheduled Completion Date to change(s) in the scope of the Work, unless the Authorized Representative agrees to an extension on this basis.

Contractor shall not be entitled to and hereby expressly waives recovery of any damages suffered by reason of any delays contemplated by this section 12.4 and any adjustment of the Contract Price in respect thereof, so that extension of time shall constitute Contractor's sole remedy for such delays.

Contractor shall also give the Authorized Representative immediate notice in writing of the cessation of any delay in respect of which Contractor has given the Authorized Representative notice as aforesaid.

ARTICLE XIII SUSPENSION OR TERMINATION OF CONTRACT

13.1 Suspension

13.1.1 **Right to Suspend** - Dofasco shall have the right, at its option, to deliver to Contractor a written notice requiring Contractor to suspend all performance under the Contract for a single period not to exceed six months whereupon:

- (a) Dofasco and Contractor shall determine what action is required for this purpose and Contractor shall do whatever is required following such determination;
- (b) Dofasco shall be entitled to audit and verify on a continuous basis expenditures made or incurred by Contractor in connection with such suspension;
- (c) Dofasco shall reimburse Contractor for all costs reasonably and properly incurred by Contractor in connection with the suspension for actions approved by Dofasco in accordance with this section 13.1.1.

13.1.2 **Termination of Suspension** - Prior to the expiry of the period specified in any notice given under section 13.1.1, Dofasco shall either:

- (a) reinstate the Contract and notify Contractor in writing to recommence performance hereunder; or
- (b) give Contractor notice of termination pursuant to section 13.2 hereof;

failing which Dofasco shall be deemed to have terminated the Contract without cause.

13.1.3 **Meaning of Suspension** - Any rescheduling of the Work or orders by Dofasco to suspend production of individual items of the Work shall not be considered a notice of suspension as contemplated in section 13.1.1 and Dofasco shall in no event be liable for losses, costs or damages incurred or suffered through delay or other cause which is attributable to the fault or neglect of Contractor.

13.2 **Termination Without Cause** - Dofasco may at any time and from time to time, in its sole discretion and notwithstanding that Contractor is not in default hereunder, notify Contractor that the Contract or any part thereof is terminated. If Dofasco shall terminate the Contract otherwise than pursuant to section 13.3:

- (a) Contractor shall cease and shall cause its Subcontractors and Suppliers to cease all further supply of labour, material, equipment and services required for the Work, or any part thereof specified in Dofasco's notice, except of such labour, material, equipment or services as Dofasco may determine to be necessary to place the uncompleted Work in a safe condition or for any other purpose;
- (b) Dofasco and Contractor shall forthwith determine the manner in which Contractor's obligations to Subcontractors and Suppliers which have survived the termination of their contracts shall be dealt with, including such matters as cancellation payments and disposal of equipment and materials already appropriated to the Work but not delivered to the Site;
- (c) Dofasco shall be entitled to control on a continuing basis any expenditures made by Contractor in connection with the termination and to audit and verify all accounts paid by Contractor to third parties; and

- (d) Dofasco shall reimburse all costs properly incurred by Contractor in connection with the termination which have been approved by Dofasco in accordance with this section 13.2.

13.3 Termination for Cause

13.3.1 Bankruptcy - If Contractor should be adjudged bankrupt, or make a proposal to creditors or a general assignment for the benefit of creditors or if a receiver is appointed for all or a substantial part of Contractor's property, Dofasco may, at its option, forthwith terminate the Contract.

13.3.2 Notice of Default - If Contractor fails to comply with the provisions of section 12.1 or, if applicable, section 12.2 Dofasco may, at its option, subject to section 12.4, terminate the Contract.

13.3.3 Effect of Termination - Upon any termination pursuant to section 13.3.1 or 13.3.2 (which termination shall in either case result from a notice of termination delivered by Dofasco), Dofasco may, without prejudice to any other right or remedy it may have, but shall not be obligated to:

- (a) take possession of the Site and of all of Contractor's materials situated in, about or upon the Site and Contractor shall assign to Dofasco all subcontracts, supply contracts and equipment rental agreements designated by Dofasco;
- (b) finish the Work by whatever method it may deem expedient;
- (c) withhold any further payments to Contractor until the Work is finished; and
- (d) set off any costs incurred by Dofasco in finishing the Work against any accounts rendered by Contractor and owing to it under ARTICLE VI, it being agreed that Dofasco shall not be required to obtain the lowest price for finishing the Work, but may make such expenditures as in Dofasco's sole judgment will best accomplish completion..

ARTICLE XIV ARBITRATION

- 14.1 Submission To Arbitration** - In the event of any dispute between Dofasco and Contractor arising out of the performance of the Work or failure or alleged failure thereof or the interpretation or observance of any of the Contract Documents or otherwise related to the Contract, such dispute shall be submitted to arbitration. Such submission shall be initiated by the giving of written notice by either party to the other party. In the event of arbitration, the arbitrator shall be such as the parties may agree to on or before three working days from the submission by either party of the dispute to arbitration. In default of agreement on or before the expiration of such three working days, then either party may apply to the Ontario Superior Court of Justice for the appointment of a single arbitrator,. This paragraph shall constitute a submission within the meaning of the Arbitration Act, 1991(Ontario) or any successor legislation thereto and that Act shall apply to any such arbitration except in respect of the rate of remuneration to be paid to the arbitrator or arbitrators, as the case may be, which shall be determined by Dofasco and Contractor. The arbitrator shall have all the powers given to arbitrators by the Arbitration Act or such successor legislation; may (subject to section 15.1) at any time and from time to time proceed in such manner as the arbitrator thinks fit on such notice as the arbitrator deems reasonable and after notice in the absence of either party; and may grant pre-award and post-award interest on any arbitration. The award and determination of the arbitrator shall be final and binding; provided that there shall be a right of appeal from the award on any question of law or question of mixed fact and law and section 16 of the Arbitration Act shall apply; and further provided that the making of an award shall be a condition precedent to any right of action by either party against the other. The costs of such arbitration shall be in the discretion of the arbitrator.
- 14.2 Effect on Work** - Notwithstanding the provisions of section 14.1, arbitration proceedings shall not be proceeded with until after the completion or alleged completion of the Work unless Dofasco or Contractor can show that the matter in dispute is of such nature as to require immediate consideration while evidence is available.

ARTICLE XV GENERAL

- 15.1 Applicable Law** - The Contract shall be governed by and the Contract Documents construed in accordance with the laws of the Province of Ontario. The parties hereto submit to the non-exclusive jurisdiction of the courts of the Province of Ontario.
- 15.2 Covenants** - All the terms and conditions of these General Conditions are to be construed as covenants as though the words importing such covenants were used in each separate section and subsection hereof.
- 15.3 Notice** - Any notice or other communication required or permitted to be given pursuant to the Contract shall be in writing and, if mailed by prepaid first class mail at any time other than within six working days prior to or at any time during a general discontinuance of postal service due to strike, lockout or otherwise, shall be deemed to have been given and received six working days after the post-marked date thereof or, if telecopied or emailed, shall be deemed to have been given and received on the day of transmission or, if delivered by hand, shall be deemed to have been given and received at the time it is delivered. Notice of change of address shall be governed by this section 15.3. Notices given by mail or telefax shall be addressed as follows:
- (a) in the case of Dofasco, to the Director of Purchasing & Logistics; or
 - (b) in the case of Contractor, to Contractor at Contractor's address shown on the Dofasco Purchase Order;
- and notices given by delivery shall be delivered to the Authorized Representative, in the case of Dofasco, and the Supervisor or an officer of Contractor, in the case of Contractor.
- 15.4 Exhibits** - Exhibits referred to in the Contract Documents are an integral part of the Contract Documents and are hereby incorporated by reference into the Contract Documents.
- 15.5 Sections** - References to sections are references to the corresponding section in these General Conditions unless otherwise stipulated or the context otherwise requires. Section and subsection headings are not to be considered part of the General Conditions and are included solely for convenience and are not intended to be full and accurate descriptions of the content thereof.
- 15.6 Entire Agreement; Modification; Waivers** - The Contract Documents constitute the entire agreement between Dofasco and Contractor pertaining to the Work and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of Dofasco and Contractor; and there are no warranties, representations or agreements between Dofasco and Contractor in connection with the Work, except as set forth or referred to therein. No supplement, modification or waiver or termination of the Contract Documents or any provision thereof shall be binding on Dofasco unless executed in writing in accordance with these General Conditions. No waiver of any of the provisions of the Contract Documents shall constitute a waiver of any other provision, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.
- 15.7 Severability** - If any provision of the Contract Documents shall be or be held to be illegal, invalid or unenforceable, such provision shall be deemed to be severed from the Contract Documents and of no force or effect; provided that the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 15.8 Assignment** - Contractor shall not assign the Contract or any portion thereof without the written consent of Dofasco, which consent may be arbitrarily withheld. Subject thereto, the Contract

shall endure to the benefit of and be binding upon Dofasco and Contractor and their respective successors and permitted assigns.

- 15.9 Interpretation** - In the Contract Documents the singular includes the plural, the plural includes the singular and any gender includes the other genders.
- 15.10 Intellectual Property** - All Intellectual Property conceived, created, invented, produced, designed or reduced to practice by Contractor or its employees, agents or Subcontractors in connection with the Contract with Dofasco contemplated by the Contract Documents shall be deemed to be owned solely by Dofasco. The term "Intellectual Property" includes, but is not limited to, inventions, modifications, discoveries, designs, developments, documentation, improvements, products, processes, techniques, know-how, details of ideas, concepts, compilations of data, confidential reports, algorithms, formulae, computer codes in either source code and object code, computer or software programs, works of authorship, trade secrets, enhancements and/or modifications to any computer or software codes or computer or software programs (whether or not patentable or registrable under copyright, trade-mark or similar legislation or subject to analogous protection), and all rights or interests therein, including, without limitation, all rights to patents, pending patent applications, and rights to file patent applications, and all rights in formulae, confidential information, proprietary information, trade secrets or know-how. Contractor shall do, and shall ensure that its employees, agents or Subcontractors do, all acts and execute all documents necessary or desirable to give effect to this paragraph, including, without limitation, the execution of any assignments or powers of attorney necessary or desirable to permit Dofasco to own, any such Intellectual Property or to obtain, register or record any rights therein as Dofasco considers necessary or desirable. The provisions of this paragraph shall be in addition to, and not in substitution for or modification of Contractor's (as the case may be) obligations under any terms and conditions associated with or referred to in the Contract Documents. The provisions of this paragraph shall survive the completion or termination of the Contract.
- 15.11 Statutes** - Unless specified otherwise, reference in the Contract Documents to a statute refers to that statute as it may be amended, or to any restated or successor legislation of comparable effect.
- 15.12 Performance on Holidays** - If any action is required to be taken pursuant to the Contract Documents on or by a specified date which is not a working day, then such action shall be valid if taken on or by the next succeeding working day.
- 15.13 Further Assurances** - Each Party shall do such acts and shall execute such further documents, conveyances, deeds, assignments, transfers and the like, and will cause the doing of such acts and will cause the execution of such further documents as are within its power as any other Party may in writing at any time and from time to time reasonably request be done and or executed, in order to give full effect to the provisions of the Contract Documents.
- 15.14 Exclusion** - The Parties expressly exclude the application to the Contract of the United Nations Convention on Contracts for the International Sale of Goods.

**EXHIBIT A REIMBURSABLE COST GUIDELINES FOR ORIGINAL
CONTRACTS/PURCHASE ORDERS AND EXTRAS**

I. TYPE OF CONTRACT - Reimbursable Cost with Fixed Fee

A. Components of Fixed Fee -

The Fixed Fee incorporates every cost that is not identified in Part I B below as a Reimbursable Cost including, but not necessarily limited to:

i) Profit

ii) Home Office Overhead

All functions performed within the Home Office. All costs associated with managing and administrating the Home Office.

ii) Site Labour - Indirect -

Document / Drawing Control	Project Construction Buyer
Expediter	Equipment Coordinator / Warehouse
Estimator	Project Control
Tool Crib Attendant	Inventory Controller

iii) Site Overhead Costs -

Site overhead costs include, but are not necessarily limited to:

Office Furnishings	Internet	Site Utilities
Office Supplies	Pagers	
Office Equipment	Telephone	

iv) Indirect costs associated with material or equipment supplied without charge by Dofasco as per section 3.28.

v) All costs associated with the management and administration of Subcontractors.

vi) All costs associated with providing Construction Materials and Equipment.

B. Reimbursable Costs -

Reimbursable Costs include, but are not necessarily limited to:

i) Site Labour - Direct -

All trades up to and including Superintendent. Labour rates as per the Rate Schedule number(s) in Dofasco's Rates Engine indicated in the Dofasco Purchase Order.

ii) Site Labour - Indirect -

Project Manager
 Construction Manager
 Site Safety Coordinator
 Truck Driver

Contract Administrator
 Field Engineer
 Scheduler
 QA/QC Representative

- ii) Premium portion of overtime wages as per the Rate Schedule number(s) in Dofasco's Rates Engine indicated in the Dofasco Purchase Order.
- iii) Small tools and equipment which are not defined in Dofasco's Rates Engine as being included in the rate of the Rate Schedule number(s) indicated in the Dofasco Purchase Order.
- iv) Applicable customs duties and non-refundable provincial sales taxes.
- v) Charges for tools and equipment owned by the Contractor at the rental rates most recently approved by Dofasco.
- vi) Equipment owned by others, at actual rental charges.
- vii) Cost of any performance or other bonds paid or incurred in connection with the Work, if required by Dofasco or Contract Documents.
- viii) Permits, licenses and certificates required for the Work.
- ix) Extension of time, subject to sections 12.4 and 13.1.1(c)
- x) Standby time, subject to sections 12.4 and 13.1.1(c)
- xi) Delay time, subject to sections 12.4 and 13.1.1(c)
- xii) Cost of disposing of surplus materials if authorized by the Authorized Representative.
- xiii) Actual costs of construction materials and equipment incorporated into the Work including freight, duty (if any) and non-refundable provincial sales taxes.
- xiv) Actual costs of Subcontractors calculated in accordance with the Contract, the General Conditions and this Exhibit.
- xv) Trade Labour transportation to and from the Site. Transportation of materials and equipment subject to section 3.28.
- xvi) Trade and lunch trailers
- xvii) Consumable/Expendable Materials -
1. Arc-Air carbon rod
 3. Bolts (for temporary enclosures)
 4. Braces (tubing - for temporary enclosures)
 5. Brazing rods
 6. Chemicals (cleaning, stabilizing, neutralizing)
 7. Coveralls – owned or rented: cleaning and repairs only

8. Electrodes/welding rods applicable to the following trades only: Ironworker, Pipefitter, Boilermaker. For all other trades electrodes / welding rods are to be included in the rate.
9. Gases (oxygen, nitrogen, argon, MAPP; all as required)
10. Lumber, nails (for temporary construction e.g. form-work, scaffolding, etc.)
11. Paint (Paint applicators are reimbursable for Painting trades only)
12. Sand, gravel etc. (temporary construction)
13. Sheets, polyethylene (for temporary enclosures)
14. Weld test coupons
15. Any other consumable/expendable material used by Contractor in extraordinary quantities in performance of the Work if reimbursement has been approved by Dofasco in writing prior to commencement of the Work.

There is no minimum or maximum dollar limit in connection with reimbursement for the consumable/expendable materials listed above.

xviii) Miscellaneous

Any other costs incurred in connection with the Work with Dofasco's prior written approval.

C. Reimbursable Costs on which no Fee is applied, and which are not included in determining "Adjusted Cost" when calculating a Fee adjustment:

These costs include, but are not necessarily limited to:

- i) Premium portion of overtime wages
- ii) Customs duties and non-refundable provincial sales taxes.
- iii) Indirect costs associated with material or equipment supplied without charge by Dofasco.
- iv) Charges for Contractor's owned equipment rentals at the rates most recently approved by Dofasco.
- v) Cost of any performance or other bonds paid or incurred in connection with the Work, if required by Dofasco or Contract Documents.
- vi) Permits, licenses and certificates required for the Work.
- vii) Extension of time.
- viii) Standby time.
- ix) Delay time.

II. TYPE OF CONTRACT - Reimbursable Cost with Percentage Fee

A. Components of Fee -

The Percentage Fee incorporates every cost that is not identified in Part II B or C below as a Reimbursable Cost including, but not necessarily limited to:

- i) Profit
- ii) Home Office Overhead

All functions performed within the Home Office. All costs associated with managing and administrating the Home Office.

- ii) Site Labour - Indirect -

Document / Drawing Control	Project Construction Buyer
Expediter	Equipment Coordinator / Warehouse
Estimator	Project Control
Tool Crib Attendant	Inventory Controller

- iii) Site Overhead Costs -

Site overhead costs include, but are not necessarily limited to:

Office Furnishings	Internet	Site Utilities
Office Supplies	Pagers	
Office Equipment	Telephone	

- iv) Indirect costs associated with material or equipment supplied without charge by Dofasco as per section 3.28.
- v) All costs associated with the management and administration of Subcontractors.
- vi) All costs associated with providing Construction Materials and Equipment.

B. Reimbursable Costs on which Percentage Fee is applied

These costs include, but are not necessarily limited to:

- i) Site Labour - Direct -

All trades up to and including Superintendent. Labour rates shall be the as per the Rate Schedule number(s) in Dofasco's Rates Engine indicated in the Dofasco Purchase Order.

- ii) Site Labour - Indirect -

Project Manager	Contract Administrator
Construction Manager	Field Engineer
Site Safety Coordinator	Scheduler
Truck Driver	QA/QC Representative

- iii) Small tools and equipment which are not defined in Dofasco's Rates Engine as being included in the rate of the Rate Schedule number(s) indicated in the Dofasco Purchase Order.
- iv) Equipment owned by others, at actual rental charges.
- v) Cost of disposing of surplus materials if authorized by the Authorized Representative.
- vi) Cost of materials and equipment incorporated into the Work exclusive of freight, duty (if any) and non-refundable provincial sales taxes.
- vii) Costs of Subcontractors calculated in accordance with the General Conditions, the Contract and this Exhibit.
- viii) Trade and lunch trailers
- ix) Consumable/Expendable Materials -
 - 1. Arc-Air carbon rod
 - 3. Bolts (for temporary enclosures)
 - 4. Braces (tubing - for temporary enclosures)
 - 5. Brazing rods
 - 6. Chemicals (cleaning, stabilizing, neutralizing)
 - 7. Coveralls – owned or rented: cleaning and repairs only
 - 8. Electrodes/welding rods applicable to the following trades only: Ironworker, Pipefitter, Boilermaker. For all other trades electrodes / welding rods are to be included in the rate.
 - 9. Gases (oxygen, nitrogen, argon, MAPP; all as required)
 - 10. Lumber, nails (for temporary construction e.g. form-work, scaffolding, etc.)
 - 11. Paint (Paint applicators are reimbursable for Painting trades only)
 - 12. Sand, gravel etc. (temporary construction)
 - 13. Sheets, polyethylene (for temporary enclosures)
 - 14. Weld test coupons
 - 15. Any other consumable/expendable material used by Contractor in extraordinary quantities in performance of the Work if reimbursement has been approved by Dofasco in writing prior to commencement of the Work.

There is no minimum or maximum dollar limit in connection with reimbursement for the consumable/expendable materials listed above.

- x) Miscellaneous

Any other costs incurred in connection with the Work with Dofasco's prior written approval.

C. Reimbursable Costs on which no Percentage Fee is applied, and which are not included in determining "Adjusted Cost" when calculating a Fee adjustment:

These costs include, but are not necessarily limited to:

- i) Premium portion of overtime wages
- ii) Customs duties and non-refundable provincial sales taxes.
- iii) Indirect costs associated with material or equipment supplied without charge by Dofasco.

- iv) Charges for Contractor's owned equipment rentals at the rates most recently approved by Dofasco.
- v) Cost of any performance or other bonds paid or incurred in connection with the Work, if required by Dofasco or Contract Documents.
- vi) Permits, licenses and certificates required for the Work.
- vii) Extension of time.
- viii) Standby time.
- ix) Delay time.

EXHIBIT B WARRANTY AGREEMENT

TO: _____ ("Contractor")

The undersigned hereby warrants and covenants that:

- (a) All equipment, material and workmanship furnished or performed by the undersigned or on its behalf as a Supplier or Subcontractor to Contractor shall be free from material defects and deficiencies.
- (b) If any defect or deficiency in such equipment, materials or workmanship shall be discovered within the longer of (i) a period of one year from the Date of Final Completion by Contractor of the work being performed by it for Dofasco or (ii) a period of 30 months from delivery of the equipment or materials to the worksite or agreed upon storage site (the longer of such periods being the "Warranty Period") the cost of replacing or correcting such defective or deficient equipment, material and/or workmanship and any other part or parts of the project the correction or replacement of which is required by reason of any breach of the undersigned's warranty shall be borne by the undersigned.

The undersigned further warrants and covenants that in the event that it is required to remedy such defects or deficiencies discovered within the Warranty Period, the warranty period for the equipment, material and/or workmanship replaced or corrected shall run for a period commencing on the day that such replacements or corrections are accepted by Dofasco and ending on the later of one year thereafter and the expiry of the Warranty Period.

The warranties and indemnities contained herein are in addition to, and do not substitute for or detract from, any other warranties and indemnities contained in any other document relating hereto or implied or required by or available at law. They shall survive any examinations, inspections and payments made by Contractor or Dofasco and certificates given by them, and no such examination, inspection, payment or certificate shall or shall be deemed to relieve the undersigned from the obligation to perform hereunder, and shall survive any termination of the contract between Dofasco and Contractor with respect to equipment, materials and workmanship completed prior to the effective date of termination or subsequently completed and delivered in accordance with the terms of termination, provided that in the case of termination all such warranties and indemnities shall expire on the day which is 12 months after the last delivery by the undersigned to Dofasco.

The undersigned acknowledges and agrees that the benefit of these warranties and covenants may be freely assigned by Contractor to Dofasco.

Executed and delivered this day of , .

[NAME OF SUBCONTRACTOR OR SUPPLIER]

by: _____

by: _____

EXHIBIT C FORM OF LETTER OF CREDIT

ISSUING BANK:

BENEFICIARY: APPLICANT:

ArcelorMittal Dofasco G.P.
 P.O. Box 2460
 Hamilton, Ontario, Canada
 L8N 3J5

DATE OF ISSUE: ISSUING BANK NO.:

EXPIRY DATE: AMOUNT:

We hereby issue in your favour this irrevocable stand-by letter of credit which is available by your draft(s) at ****sight**** for ****100% **** of invoice value drawn on

(name of issuing bank)

bearing the clause "Drawn under Stand-by credit no.

issued by "

accompanied by the following documents:

1. Copy of unpaid commercial invoice(s)
2. Beneficiary's officially signed declaration stating "Dofasco confirms that they have sent to (name of applicant) documents for payment in due time and that (name of applicant) has not effected payment of \$_____ as per payment terms of the invoice(s)."

We hereby engage with drawers that drafts drawn and negotiated in conformity with the terms of this credit will be duly honoured on presentation.

Yours faithfully

Authorized Signature

Authorized Signature

Except so far as otherwise expressly stated this stand-by credit is subject to the Uniform Customs and Practice for Documentary Credits, 1983 revision, ICC Publication no. 400.

EXHIBIT D PROPERTY RELEASE AND INDEMNITY

In consideration of the use by the undersigned of the tools, vehicles, equipment or other moveable property ("Property"), or of the personnel of Dofasco only on Dofasco property, the undersigned

1. releases, remises and forever discharges Dofasco from the covenants and agrees to indemnify Dofasco and save it harmless from and against any and all actions, causes of action, suits, debts, accounts, claims, or demands, including, without limiting the generality of the foregoing, claims for direct, indirect, consequential and special damages and claims for loss of use and loss of profits, which the undersigned or any other person, including an employee of the undersigned and his or her wife, husband, parents, guardians, children, heirs, executors, administrators or assigns, now has or hereafter can, shall or may have suffer;
2. covenants and agrees to indemnify Dofasco and save it harmless from any losses or damages suffered by Dofasco, including, without limiting the generality of the foregoing, any loss or damage suffered by Dofasco's equipment, land or other property and any loss or personal injury suffered by any officer, director, shareholder, employee, agent or other personnel at Dofasco;
3. covenants and agrees to repair, or effect repairs to, Dofasco's equipment, land, buildings or other property where such equipment, land, buildings or other property have been damaged by the undersigned;

for or by reason of or in any way arising out of or relating in any manner whatsoever to the use by the undersigned or its employees or agents (whether or not in conjunction with the tools, vehicles, equipment or other moveable property of the undersigned, or with the undersigned's employees or agents) of Dofasco's tools, vehicles, equipment or other moveable property, or Dofasco's personnel, whether or not caused by or resulting from:

- (i) the working condition or state of repair or suitability for a particular purpose of Dofasco's tools, vehicles, equipment or other moveable property; or
- (ii) the negligence or willful misconduct or lack of training or ability or otherwise of Dofasco's personnel.

The undersigned covenants and agrees that if, to use or operate the property, the undersigned or any of its employees or agents is required by a Government authority to have a license, certificate or permit, that such license, certificate or permit is held by the person who will use the Property, that it is valid and that the person is in good standing with the granting Government authority. Prior to the release of the Property, the undersigned will provide a copy of the license, certificate or permit to Dofasco.

If Dofasco at any time, in its opinion, determines that the undersigned or any of its employees or agents are using the Property improperly and so advises the undersigned, its employee or agent, Dofasco may, in its sole discretion, without any further notice immediately take possession of its Property and suspend its use.

The undersigned further agrees to carry comprehensive liability insurance covering property damage and bodily injury in the amount of **\$2,000,000**, on terms and with an insurer satisfactory to Dofasco, showing Dofasco as a named insured, and the undersigned agrees to provide to Dofasco, prior to using any tools, vehicles, equipment or other moveable property of any personnel of Dofasco, evidence satisfactory to Dofasco that it has obtained such insurance.

The provisions hereof shall ensure to the benefit of Dofasco's successors and assigns and shall be binding on the heirs, executors, administrators, successors and assigns of the undersigned.

DATED at Hamilton this _____ day of _____ 20 ____

BY: _____

COMPANY: _____

Health and Safety Department - Form HS792C - Revised: 07/26/2000

EXHIBIT E LIST OF CONTRACTOR RECORDS

Dofasco shall be entitled to audit Contractor's books and records including, but not limited to:

1. Payroll Hire Sheet
2. Payroll Employee Listing - Badge #, first date of hire (active / inactive)
3. Foreman / Trade Supervisor Logs
4. Manpower Scheduling Records
5. Payroll Input Sheet
6. Payroll Active Employee report
7. Payroll Journals
8. Payroll Input / Edit reports
9. Payroll Reallocation reports
10. Payroll Reports by Job / Work Order #
11. Payroll Reports by Employee
12. Billing Timesheets
13. Procurement records—requisition, purchase orders, quotes, price listings
14. Material/Equipment Supplier --packing slips, invoices, cancelled cheques
15. Company owned material transfer slips
16. Company owned equipment delivery slips
17. Subcontractor records: quotes, requisitions, purchase orders, invoices, cancelled cheques
18. Job Cost Reports
19. Union agreements/union remittances
20. WSIB Cad ratings/ remittances
21. Revenue Canada remittances
22. Rates schedules / reference correspondence
23. Safety Validations Safe Work Permits
24. 'Tool Box Talk' documents

EXHIBIT F CONTRACTOR INVOICE DISCLOSURE

Dofasco Purchase Order Number: _____

Dofasco Purchase Order Description: _____

Contractor Invoice Number: _____

Invoice Period: _____

Defined terms used herein have the meaning given to them in the Contract Documents, including the General Conditions.

Contractor is submitting the above-referenced Contractor invoice for payment.

By signing this form, I am acknowledging, on behalf of Contractor, that all scope changes to date have been identified, in writing, with regard to the above Dofasco Purchase Order. I further acknowledge there are no other events, issues, or circumstances, either direct or indirect, that pertain to the above Dofasco Purchase Order that have caused or may cause a change to the Work having an adverse affect on cost and/or schedule for Contractor.

On behalf of Contractor, I hereby waive any rights of Contractor to initiate any other change order(s) or make any claim against Dofasco with respect to the Dofasco Purchase Order for any events, issues or circumstances occurring prior to this invoice period.

Contractor Comments / Additional Information

--

Name (print): _____

Signed: _____

Company Name: _____

Position: _____

Date: _____

EXHIBIT G QUALITY ASSURANCE STANDARDS

1.0 General

The Contractor shall provide and operate throughout the Contract a quality system which meets the requirements of ISO 9001 'Quality Systems – Model for Quality Assurance in Design/Development, Production, Installation and Servicing' or a comparable nationally or internationally recognized standard, in accordance with detailed guidelines to be agreed upon prior to Contract finalization.

The Contractor's quality assurance activities shall include, but not be limited to, those functions defined in this section and, additionally, include any activities that Dofasco may direct, to prove conformity to the Contract Documents. Contractor shall provide for the detection and removal of all non-conforming materials or faulty or inadequate workmanship, either prior to or at the latest state of process or manufacture, where the required characteristics can be measured and observed.

Contractor is responsible to make itself aware and comply with all of the Canadian policies, codes and standards applicable to the Work.

2.0 Quality System

2.1 Certificate of Registration

The Contractor shall submit with its Bid a copy of its official certificate of registration from an accredited registrar, or identify in a written statement to Dofasco those aspects of the quality system in subsection 1 above where noncompliance or nonconformance occurs.

2.2 Quality Assurance Procedures

The Contractor shall submit with its Bid a copy of the Quality Manual, which describes the quality system and a typical quality plan as defined in subsection 4.0.

Dofasco will review those documents and may wish to carry out a quality system assessment at the Contractor's premises prior to considering any contractual commitments.

3.0 Subcontracts and Purchasing

The Contractor shall ensure that quality requirements specified in the Contract Documents and agreed upon in the Contract are given to all its major Subcontractor and Suppliers of goods and services. The originator of the subcontracts and purchase orders shall clearly state within the subcontracts and purchase orders the extent of inspection surveillance which will actually be undertaken by the originator or its representative at the source of the supply, and also indicate that inspections at the source of supply may be carried out by Dofasco.

Material or services provided by the Subcontractor and Suppliers must be controlled and verified by the Contractor in order to achieve quality requirements with regard to material, assembly, function and fit. Contractor must verify that material used in fabrication is new, unused, and complies with detailed drawings, and that visual inspections of material have been made to confirm that material identification has been properly maintained. Documentation of verification and inspections must be available for Dofasco's review for the duration of the Contract.

4.0 Quality Plans

4.1 Requirements and Scope of Quality Plans

To ensure that the required 'fitness for purpose' is achieved and maintained, the Contractor shall develop and prepare a detailed, Contract specific quality plan to cover the scope of Work prescribed in the Contract. This quality plan shall include those activities undertaken by the Subcontractors and Suppliers working on behalf of the Contractor, and may include the Subcontractors and Suppliers' quality plans.

Within the timeframe agreed upon with Dofasco, the Contractor shall submit to Dofasco two copies of the Contract specific quality plan for review and approval.

4.2 Implementation Audits

The Contractor shall be responsible for implementing and maintaining the quality plan, which may be subject to audit by Dofasco or its representative.

5.0 Dofasco's Quality Activities

Dofasco's review of the quality plan shall include the identification of Dofasco's hold, witness, and surveillance activities, etc., which will be subsequently marked on the quality plan for advice to the Contractor. These hold points and surveillance activities may include the verification of the Contractor's, or its major Subcontractors and Suppliers as deemed necessary by Dofasco or its representative. These activities may include:

- (a) A detailed audit of any phase of the Contractor's quality program or its manufacturing process on a periodic basis or as deemed necessary by Dofasco;
- (b) the review of design controls for equipment including process control equipment;
- (c) the witnessing of weld preparation and testing on major fabrications;
- (d) the witnessing of assembly and performance tests of main or critical equipment; and
- (e) the witnessing of simulated functional tests on process automation systems, both in a stand alone and integrated format.

6.0 Certificates of Conformity

6.1 Components Requiring Certification

Where required by the applicable policies, standards and codes, certificates of conformity must be supplied.

7.0 Inspection and Testing

7.1 Scope

Inspection and testing shall include all items in the appropriate national or international policies, standards or codes of practice.

Contractor shall perform all inspections, non-destructive tests and equipment performance tests required to ensure good quality and compliance with this document.

Inspections and tests shall be carried out in accordance with specified or approved procedures and the results shall be judged in accordance with the specified standards or other agreed criteria. All Work is subject to inspection by Dofasco or its representative and approval at all times, but such approval does not relieve Contractor of responsibility for proper functioning of material and Work.

7.2 Procedures Subject to Approval

The Contractor shall submit its procedures to Dofasco when it is a condition of the Contract Documents that a manufacturing, inspection or testing process is subject to the approval of Dofasco or when any matters requires acceptance criteria to be so agreed. Whenever practicable, the Contractor's procedures shall be submitted early enough to allow ample time for agreement to be reached.

7.3 Notice of Inspections and Tests

The Contractor shall advise Dofasco in writing of the scheduled dates of inspections and tests subject to 'hold' and 'witness', as identified in the quality plan with at least 2 weeks notice being given.

When Dofasco elects to provide its own inspector(s), the Contractor must:

- (a) Provide sufficient, safe and proper facilities at all times for inspection of the Work; and
- (b) Furnish full information concerning all material entering into the Work and grant the inspector(s) free access at all reasonable times in all parts of Contractor's shop where equipment is being manufactured, stored or assembled.

7.4 Quality Control at Manufacturer's Facility

7.4.1 General

All sub-assemblies shall be tested, preferably at the place of manufacture, using the associated electrical, lubrication, hydraulic and fluid services where practicable.

Testing of materials and sub-assemblies shall be successfully completed prior to painting or other necessary coating, except that polished parts shall be adequately protected at all times.

All records of tests, including charts, diagrams, films and the like, when appropriate, shall be suitably identified and made available for inspection by Dofasco.

Test and analysis certificates shall be provided in accordance with applied standards and statutory specification requirements and additionally as may reasonably be required by Dofasco.

7.4.2 Welding Procedures and Weld Testing

Qualified personnel in accordance with the Contract Documents and the approved procedures shall carry out all welding and all testing of welds.

The Contractor must be aware of and in full compliance with the Canadian welding policies, standards and codes established by the Technical Standards and Safety Authority (TSSA) and Canadian Welding Bureau (CWB).

Testing of welds shall include, but not be limited to, those in all areas of high working stress. The Contractor shall show, both on the drawings and in its quality plan which it submits for approval, the methods of testing which it proposes to adopt in each case, both non-destructive and by means of test specimens.

The Contractor shall carry out the tests approved and such additional tests as Dofasco may require at any time to prove conformity with the Contract Documents.

7.4.3 Final Inspection Prior To Shipment

The goods ready for delivery shall be subject to a visual final inspection prior to packing. In particular, objects to be put in sealed bags, cases and crates shall be required to pass such inspection. The Contractor and Dofasco will establish by mutual agreement the necessary procedures for final inspections.

All cargo shall pass the packing inspection by the Contractor in accordance with agreed *Dofasco Shipping Procedure*. Following inspection of the cargo for shipment a release certificate will be issued by the Contractor.

7.5 Tests at Construction Site

Tests will be carried out by the Contractor and may be witnessed by Dofasco during construction to ensure that the Plant has been constructed to the standards specified. Generally, these tests will be limited to 'cold, dry and no-load' tests and related to standards of construction of units of Plant or equipment rather than the performance or function of systems. However, the Contractor shall list the tests required in its quality plan and it shall include all areas of the new Plant.

Dofasco will, following its review of the quality plan, advise the Contractor if any further tests are required to meet its requirements.

The Contractor shall be responsible for supervising and inspecting the progress of the Work and checking its accuracy to any extent that may be required.

Site testing of Plant, services equipment, pipework and electrical apparatus shall be carried under the Contractor's supervision, in accordance with the agreed quality assurance procedure and incorporating the appropriate standards.

The Contractor shall set up and supervise quality control procedures, prior to construction, specifying those tests on material, Plant and equipment necessary to confirm that the Work of installation, assembly and erection has been satisfactorily completed.

Individual quality control to be carried out at Site shall be incorporated in the agreed quality plan in order to check the continuity of practice from design to setting to Work.

Reporting of Site quality activities shall be mutually agreed by the Contractor and Dofasco. It shall include special reports on rejections, defects or damage. All test and inspection reports shall be prepared by the Contractor. The Contractor shall also maintain a complete set of records and reports at Site.

Dofasco shall have unrestricted access to all Site quality control records maintained by the Contractor and Dofasco will make available to the Contractor its own records as Dofasco considers necessary.

7.5.1 Operational Testing

Following the completion of erection, tests will be conducted under the supervision of the Contractor, with Dofasco's operation personnel to ensure the safe and correct setting to Work of the Plant or Plant section. Once the 'cold, dry and no-load' tests, are completed, further tests using loaded Plant will be conducted.

During the setting to Work, each individual item and function of the Plant will be tested to prove correct operation and that all functions are correct in relation to each other, including the adequacy of the lubrication systems and similar items. The Contractor shall detail the tests required in its quality plan.

7.5.2 Performance Guarantee Tests

Tests, including the Plant performance guarantee tests, shall be carried out during the working up of the Plant to demonstrate that the performance of the Plant is in accordance with the Contract Documents. Such tests shall be carried out by Dofasco under the supervision of the Contractor on individual machines as may be required to the satisfaction of Dofasco that the operation is of the standard guaranteed and necessary for normal service in the Works. The guaranteed performance including the efficiency of usage of power, fuel and other piped services and the correct timing, sequence and function of control loops will be assessed against the data in the Contract.

The Contractor shall provide all test equipment required to demonstrate Plant performance except where this equipment has already been supplied as part of the Contract. Chemical metallurgical and physical testing of samples will be carried out by Dofasco under the supervision of the Contractor.

The Contractor shall be responsible for monitoring and recording all aspects of Plant performance required by the tests.

Where it is not practicable to use live data, simulated operational input data shall be used to confirm that the computer functions, operator instructions, etc. produce correct outputs at the equipment interfaces, the interfaces themselves having been checked during the previous tests (mechanical and electrical). These tests will establish the correct functioning of all hardware, software and associated equipment in so far as it is practicable to do so without the actual complete operation of the Plant.

After completion of all operational tests, which do not involve total process control, trials shall take place to demonstrate that the system is ready for production use.