

Spec. O-OC**ARCELORMITTAL DOFASCO G.P.****HAMILTON, ONTARIO**SPECIFICATION NO. O-OCCOVERING General Conditions -Supply of Equipment

DIVISION:

DATE:

DEPARTMENT:

ENG. REF.:

UNIT:

PREPARED BY:

SUMMARY:

A specification setting out commercial terms for equipment supply contracts.

ALL REVISIONS TO THIS SPECIFICATION TO BE HANDLED BY THE CORPORATE SECRETARY'S OFFICE.

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 meanings ascribed thereto:

[**Acceptance Date**÷ shall mean the date so specified in the Certificate of Final Completion as executed by the Authorized Representative;

[**accepted**÷ or [**approved**÷ or [**to the satisfaction of**÷ shall mean, unless the context otherwise requires, that the Equipment, Services, or other word so modified shall be acceptable to or be approved by or be satisfactory to the Authorized Representative;

[**Authorized Representative**÷ shall mean the Person or Persons so designated in the Contract Documents, and any successor to such Person or Persons, and shall mean, with respect to any particular provision of these General Conditions, the particular Authorized Representative so designated with respect to such provision, if applicable;

"**Certificate of Final Completion**" shall mean a completion certificate in the form prescribed by Dofasco from time to time;

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

"**Contract Documents**" shall mean the Dofasco invitation to bid and related documents (including Vendor's Quotation) which resulted in the issuing of the Dofasco Purchase Order, the Dofasco Purchase Order, the General Conditions, Dofasco's standard technical specifications and applicable specific technical specifications, any other document referred to or incorporated by reference in the Dofasco Purchase Order, and any and all other drawings, samples, models, specifications, supplemental instructions and documents which Vendor and the Authorized Representative agree shall be Contract Documents or which become the property of Dofasco pursuant to section 3.5 (but shall not include any of Vendor'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 the Vendor pursuant to the provisions of such documents, including the General Conditions;

"Contract Price" shall mean the aggregate of the Equipment Price and the Services Price (if any);

"Date of Final Completion" shall mean the date so specified in the Certificate of Final Completion as executed by the Authorized Representative(s);

"Delivery Date" shall mean the date on which all of the Equipment is delivered pursuant to Article VI;

"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, excluding any terms and conditions (other than safety instructions) printed on the reverse side thereof; or (ii) the agreement entered into between Dofasco and Vendor pursuant to which the Work is being performed, as the same may be amended from time to time pursuant to the provisions hereof;

"Equipment" shall mean the equipment and spares to be supplied by Vendor to Dofasco in accordance with the terms of the Contract, including the design and engineering thereof whether performed prior to or subsequent to the date of the Contract;

"Equipment Price" shall mean the price for the Equipment specified on the Dofasco Purchase Order, which may include a lump sum price for Services, as adjusted in accordance with the provisions of Article X;

"General Conditions" shall mean this Specification O-OC, 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 the Authorized Representative and Vendor;

"Person" shall include individuals, trusts, firms, partnerships and corporations;

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

"Safety Act" shall mean the Occupational Health and Safety Act, R.S.O. 1980, ch. 321, including the regulations thereto, as amended or reenacted from time to time, and any successor legislation;

[Services" shall mean the technical services (including installation and/or commissioning) to be provided by Vendor to Dofasco in accordance with the terms of the Contract;

"Services Price" shall mean any price for Services which is separately identified as such in the Dofasco Purchase Order, multiplied by the number of days for which Vendor and Dofasco agree that Services shall be charged;

"Site" shall mean the location on Dofasco's property (if any) which is designated as the site of the Work in the Contract Documents;

"Specification O-OB" shall mean Dofasco's Specification O-OB governing construction, 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 the Authorized Representative and Vendor;

"Supplier" shall mean a Person retained directly by Vendor, or indirectly by Vendor through a Supplier, to supply a portion of the Equipment or Services, whether or not such Person is subject to some degree of supervision by Vendor in the performance of its work;

"Vendor" shall mean the Person with whom the Dofasco Purchase Order is placed;

[Vendor's Quotation" shall mean Vendor's written quotation on the Contract as accepted by the Authorized Representative(s);

"Warranty Period", if not detailed in a Dofasco specification for the Equipment which forms part of the Contract Documents, shall mean the shorter of:

- (a) the period commencing with the Acceptance Date and ending 12 months later; and

- (b) the period (I) commencing with (i) in the case of any part of the Equipment the manufacture of which is suspended pursuant to section 14.1.1 and is 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 Equipment the manufacture of which is terminated pursuant to section 14.2 or 14.3, the date that such termination is effective; and (iii) in all other cases, the Delivery Date and (II) ending 24 months later;

"Work" shall mean the supply of the Equipment and the provision of the Services (if any);

"working day" shall mean a day other than a Saturday, a Sunday, or a holiday which is generally observed within the relevant segment of the industry in the area where the Equipment is being manufactured; and

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

SCOPE OF WORK

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ARTICLE III

CONTRACT DOCUMENTS

3.1 **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.

3.2 **Conflict between Documents** - In the event of 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) drawings of larger scale shall govern over drawings of smaller scale of the same date;
- (c) specifications shall govern over drawings of any date;
- (d) technical specifications shall govern over plant standard specifications;
- (e) any internal conflict in the specifications or between different specifications shall be resolved in writing by Dofasco's Head of Engineering;
- (f) General Conditions shall govern over specifications, Vendor's Quotation, and any instructions given by Dofasco unless otherwise expressly provided in writing by the Authorized Representative;
- (g) where the Vendor has entered into a contract with Dofasco in connection with the Work of which Specification O-OB forms a part, the provisions of the General Conditions 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 the General Conditions shall pertain to equipment and materials supplied by Vendor in lieu of the provisions contained in Specification O-OB; and
- (h) the Dofasco Purchase Order shall govern over the General Conditions.

3.3 **Supplemental Instructions** - During the progress of the Work, the Authorized Representative may furnish Vendor 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 the Vendor, 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 X shall be applicable.

3.4 **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) Vendor shall notify the Authorized Representative promptly in writing if it disagrees with such determination; and
- (c) the Authorized Representative shall have the right, if so notified, to require Vendor in writing to proceed with the Work while the disagreement is being resolved.

3.5 **Ownership** - Subject to paragraph (b) of section 4.1, all Contract Documents and copies thereof, all other models, patterns, templates and other documents and materials furnished by Dofasco, all models, patterns, templates and other documents and materials furnished by Vendor 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 Vendor in or in connection with the Work, but (subject to section 7.2) Vendor shall bear the risk of loss of and damage thereto, normal wear and tear excepted.

3.6 **Return of Documents** - If requested by Dofasco, and subject to paragraph (b) of section 4.1, all copies of the Contract Documents and the aforesaid models, patterns, templates, other documents, materials and tools shall be returned to Dofasco upon the Date of Final Completion or earlier termination of the Work, except that Vendor may keep one copy of all documents for its Project record file, including a signed set of Contract Documents.

ARTICLE IV

OBLIGATIONS OF VENDOR

4.1 **Obligations Prior to Work** - Before commencing to manufacture the Equipment, Vendor shall:

- (a) review all of the Contract Documents and promptly report to the Authorized Representative any ambiguities, errors, inconsistencies, omissions or discrepancies it may discover in any of them, or any non-compliance with laws, ordinances, rules, regulations and codes applicable at the Site relating to the Equipment, including the design and operation thereof, which it may discover;
- (b) designate to the Authorized Representative in writing any patterns, designs, models, technical information, drawings, or other items to be furnished by Vendor in connection with the Work which it claims are proprietary and which it therefore wishes to have exempted from the provisions of sections 3.5 and 3.6, including any such items designated as proprietary in the Vendor's bid, and reach agreement with the Authorized Representative on such designation;
- (c) provide Dofasco with evidence of product liability and other insurance coverage if so requested by Dofasco; and
- (d) provide to the Authorized Representative with such other information and documentation as the Authorized Representative may reasonably require, including without limitation the design layouts required pursuant to section 4.19.

4.2 **Approval of Suppliers** - Vendor shall give the Authorized Representative notice in writing setting out the names of the Suppliers, if any, which it proposes to use and stating the portions of the Work such Suppliers shall perform or supply. The Authorized Representative may object to the use by Vendor of one or more proposed Suppliers and require Vendor to subcontract to some other Person or require Vendor to perform such portion of the Work but Dofasco shall not require Vendor to subcontract with any Person to whom Vendor may reasonably object.

4.3 **Form of Supply Contract** - Vendor's subcontracts and purchase orders with its Suppliers shall contain provisions consistent with the provisions of the Contract Documents. Vendor shall provide to the Authorized

Representative, at his request, copies of such subcontracts and of purchase orders issued by Vendor to 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 Vendor. Vendor shall have the right to delete price and cost information from any such subcontracts and/or purchase orders requested by the Authorized Representative.

4.4 **No Contractual Relationship** - Nothing contained in the Contract Documents and nothing done by Vendor shall create any contractual relationship between any Supplier and Dofasco. Notwithstanding the foregoing, Vendor shall permit Dofasco to communicate directly with Suppliers in all matters relating to their performance of their respective subcontracts, except for matters which affect price or payment under such subcontracts.

4.5 **Supervision of Manufacture** - Manufacture of the Equipment shall be diligently supervised by a qualified superintendent employed by Vendor.

4.6 **Compliance with Law** - Vendor shall be responsible for verifying that the Equipment, if manufactured and operated in accordance with the Contract Documents, complies and can be operated in compliance with the applicable laws, codes, regulations and ordinances relating thereto which are in effect at the Site on the date of Vendor's Quotation, whether federal, provincial 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 Vendor's Quotation which result in the Equipment ceasing to comply with then current law. Vendor shall perform the Services in compliance with applicable laws and ordinances in effect at the time such Services are performed.

4.7 **Safety Requirements** - Without limiting the generality of section 4.6:

4.7.1 **Compliance** - While on the Site, the Vendor shall comply:

- (a) with all of the legislative and regulatory requirements of the Safety Act, the provisions of which Vendor represents that it is familiar with; and
- (b) with all occupational health and safety requirements which are now, and which hereafter may be, established by Dofasco, and with all orders and directives given by the Authorized Representative and/or Dofasco's safety representative;

and shall, on the request of the Authorized Representative, provide to him from time to time evidence of such compliance.

4.7.2 **Responsibility** - While on the Site, the Vendor is responsible to ensure that the requirements of the Safety Act and any requirements that may be established by Dofasco are complied with. Where in the opinion of the Vendor, there may be unsafe work conditions or practices at the Site, the Vendor 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 the Persons designated by Dofasco as its engineer, construction manager and construction safety supervisor for the Work).

4.7.3 **Safety Meetings** - The Vendor shall conduct on-site safety meetings with its employees, as required by Dofasco or by applicable law, shall prepare written minutes of each of such meetings and shall send a copy of the minutes to the Authorized Representative within two days of the date of each meeting.

4.7.4 **Accidents** - In the event that an accident occurs on the Site , the Vendor must submit to the Authorized Representative forthwith after the occurrence of such accident and in any event within forty-eight (48) hours after the occurrence of the accident the following documents:

- (a) a copy of the Workers' Compensation Board Form 7 which has been filed or is to be filed with the Workers' Compensation Board in respect of such accident;
- (b) a copy of the Accident Investigation Report which has been prepared in respect of such accident, which shall include a detailed description of the accident, and the identification of procedures which will be adopted by the Vendor in order to prevent the re-occurrence of such accidents;

and shall forward to the Authorized Representative a copy of the information required under this section 4.7.4.

4.7.5 **Infractions** - Vendor shall provide to the Authorized Representative, forthwith after receipt by Vendor, a copy of any Ministry of Labour project inspection reports issued to Vendor in connection with the Work.

4.8 **Inspection of Equipment** - If at any time during the manufacturing of the Equipment the whole or any part or parts of the Equipment are required to

be tested, inspected, or approved (i) pursuant to the Contract Documents, Vendor shall give the Authorized Representative timely notice of its readiness for inspection and (ii) by an authority other than Dofasco, Vendor 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 4.8 and section 6.1 "timely notice" shall mean, in cases where the Equipment is being manufactured in Canada or the United States, five working days and in all other cases, ten working days. Vendor shall furnish promptly to the Authorized Representative all certificates given by, and copies of all inspection reports of tests done on the Equipment by, any third party. Vendor shall also permit and shall cause Suppliers to permit Dofasco or Dofasco's authorized agent to enter Vendor's or Supplier's premises, as the case may be to perform whatever testing or other inspection of the Equipment it deems necessary or desirable.

4.9 **Co-ordination of Work** - Vendor shall schedule and co-ordinate the performance of the Work with the Authorized Representative and shall cause its employees, agents, servants 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; and
- (b) co-ordinate the performance of the Work with other activities on the Project.

4.10 **Responsibility for Materials, Labour and Design**

4.10.1 **Use of Dofasco Products** - In the performance of the Work, Vendor must utilize products which are 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 4.10.1 shall be deemed to obligate Dofasco, its subsidiaries or such other entities to provide products to Vendor or to adjust Vendor's allocation of steel.

4.10.2 **Canadian Manufacture** - Except when otherwise specified or agreed to in writing by the Authorized Representative, all materials and parts used by Vendor must be of Canadian manufacture. Vendor 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 sourced materials and parts were substituted for those of Canadian manufacture.

4.10.3 **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 Equipment to allow Dofasco to determine their acceptability. If Dofasco determines that such materials or parts are not acceptable, and so advises Vendor within a reasonable time, Vendor shall not incorporate them in the Equipment. If Dofasco determines that such materials or parts are acceptable, the materials or parts actually incorporated in the Equipment shall be equivalent to the samples or to those tested.

4.10.4 **Labour** - If the Authorized Representative advises Vendor 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 Safety Act, Vendor shall forthwith remove such Person from employment on the Work and that Person shall not again be employed on the Work without the approval of Dofasco's Head of Engineering.

4.10.5 **Design** - Vendor shall be solely responsible for all engineering means, methods, techniques, sequences and procedures employed in connection with the Work; provided that where the Contract Documents specify a method of design, in whole or in part, Vendor shall be solely responsible for the proper execution of such specified method of design and equally responsible, together with Dofasco, for the suitability of the method.

4.11 **Manner of Performance** - All of the Work shall be executed by the Vendor or under its supervision in a thorough, substantial and workmanlike manner, in accordance with the Contract Documents.

4.12 **Notice of Deficiencies** - Vendor shall, promptly upon becoming aware thereof, report to the Authorized Representative any apparent deficiencies in the work or activities of other Persons 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.

4.13 **Additional Costs Borne by Vendor** - Vendor shall be solely liable for and shall pay the following costs:

- (a) costs incurred in examining the Work, if such Work is found by Dofasco not to be in accordance with the Contract;

- (b) the costs incurred in uncovering and restoring any portion of the Equipment if the Contract Documents, Dofasco's instructions to Vendor or any relevant law requires inspection and the portion of the Equipment 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 Vendor, at variance with any applicable laws, rules, regulations and codes relating to the work if Vendor failed to notify the Authorized Representative in writing of such variance; and
- (d) all costs, expenses and damages attributable to Vendor'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 it has failed to notify the Authorized Representative in writing and to obtain the Authorized Representative's consent thereto.

In the event that Dofasco shall pay any costs for which Vendor is liable under this section 4.13 Vendor shall forthwith reimburse Dofasco the amount of such costs.

4.14 **Discharge of Liens** - Vendor shall forthwith vacate and discharge or cause to be vacated and discharged all claims for which construction or other liens are registered against Dofasco's lands (other than liens registered by Vendor) with respect to any portion of the Work. The cost thereof shall be borne by Vendor.

4.15 **Performance or Other Types of Bonding** - If Dofasco or the Contract Documents require Vendor to obtain one or more bonds, Vendor 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 Vendor the cost thereof.

4.16 **Letters of Credit** - If the Contract Documents provide that Vendor shall obtain one or more letters of credit, Vendor shall promptly provide Dofasco with such letters of credit in a form satisfactory to Dofasco, issued by a financial

institution approved by Dofasco, and shall maintain such letters of credit in good standing in accordance with the Contract Documents.

4.17 **Patent Infringement** - Subject to section 5.1, Vendor 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 by reason of the manufacture or operation of the Equipment provided, however, that:

- (a) Dofasco shall notify Vendor promptly in writing of any such claim or proceeding;
- (b) Dofasco hereby authorizes Vendor to defend or settle, at its own expense, any such claim or proceedings and, if necessary, to procure at Vendor's expense Dofasco's right to continue using the Equipment, provided that Dofasco shall be permitted by Vendor to participate in all discussions and decisions of Vendor with respect to such claims and proceedings and Dofasco shall, at no cost to itself, assist Vendor in defending claims by third parties for such infringement; and
- (c) in the event that infringement is established and Vendor is unable, for a reasonable fee, to procure Dofasco's right to continue using the Equipment, Vendor shall modify or replace the infringing Equipment to the satisfaction of Dofasco so that it is non-infringing and so that the Equipment can continue to be operated in the same manner as had been contemplated by the Contract Documents.

4.18 **Confidentiality** - Vendor 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 Vendor by Dofasco and which Dofasco specifies as confidential or any other information of which Vendor gains knowledge in the course of performing the Work, provided that this prohibition shall not apply to any information which was already known to Vendor (as shown by written records) or which is generally known to the public (through no act of Vendor). Vendor shall ensure that its employees, its Suppliers and their employees observe the confidentiality obligations contained in this section 4.18.

4.19 **Design Layouts**

4.19.1 **Initial Submission** - Vendor shall forward to the Authorized Representative for approval two separate copies of all completed design layouts of the Equipment stamped "For Approval", before manufacturing or other activity is commenced with respect thereto.

4.19.2 **Approval of Design Layouts** - Dofasco shall return to Vendor one copy of each design layout, with any applicable comments, and either marked with requests for revisions or stamped [Approved]. The Vendor shall notify Dofasco within five working days of receipt of marked up design layouts whether it considers any changes made by Dofasco to be a change in scope, and the provisions of section 10.2 shall otherwise be applicable.

4.19.3 **Deemed Approval of Design Layouts** - Unless specified elsewhere in the Contract Documents, if Dofasco has not returned the design layouts to Vendor within 15 working days of the date on which they were submitted to the Authorized Representative pursuant to section 4.19.1, and Dofasco has not notified Vendor by telefax to hold design pending receipt of instructions, Vendor shall notify the Authorized Representative by telefax that such design layouts have not been returned and approved by Dofasco. If Dofasco, within 10 working days of such notice, fails to approve or provide additional instructions with respect to such design layouts, Vendor may commence detailing and manufacturing.

4.20 **Drawings and Schedules**

4.20.1 **Delivery of Drawings** - Vendor shall deliver to Dofasco:

- (a) the drawings required by the Contract Documents in accordance with any schedule established in the Contract Documents; and
- (b) one complete set of photographic 4 mil. mylar reproducible drawings of the Equipment, as supplied, within 30 days of the Delivery Date.

4.20.2 **Schedules** - Vendor shall, within 21 days after award of the Contract or such other period as may be stated in the Contract Documents, submit the following to the Authorized Representative for approval:

- (a) a schedule of the Vendor's design drawings, shop drawings or drawings of proprietary equipment to an established design, showing a list of all such drawings with titles and drawing numbers, and the operating instructions, parts and service manuals (if applicable), and the dates each drawing and/or each of the

manuals will be submitted to the Authorized Representative for approval; and

- (b) a simplified critical path network or schedule showing duration of drawing production, material procurement, manufacturing activities, assembly, testing and shipment.

The schedules shall subsequently be updated and submitted to the Authorized Representative monthly with a report on all changes.

4.20.3 **Drawing Certification** - Vendor shall not and shall not allow any Supplier to submit any drawing to Dofasco which has not been competently checked for manufacturing in accordance with the specifications contained in the Contract Documents and which has not, where required by law, been certified with the stamp of a competent professional engineer properly registered with the Association of Professional Engineers of Ontario. Vendor 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). Vendor 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 Vendor's delivery date commitment, if any, set out in the Contract Documents.

4.21 **Delivery of Bills of Material** - Unless otherwise specified in the Contract Documents, as soon as reasonably possible, Vendor shall deliver to the Authorized Representative:

- (a) with respect to all items purchased by Vendor or Suppliers and incorporated in the Equipment, drawings and part lists which set out, with respect to such items, the manufacturer's name, the Supplier's name and address, and detailed ordering description;
- (b) with respect to items manufactured by Vendor or Suppliers, drawings which show such items in detail, including detailed dimensions and tolerances and complete material specifications;

and in all cases items which have been designated proprietary to Vendor by mutual agreement pursuant to paragraph (b) of section 4.1 shall be clearly identified.

4.22 **Delivery of Instruction Manuals** - Unless otherwise specified in the Contract Documents, a draft manual shall be submitted to the Authorized Representative for approval at least two months before the first shipment of Equipment, which shall contain at least the following detailed information:

- (a) instructions on receiving, handling and storage of Equipment;
- (b) step by step installation instructions with illustrations and/or drawings, including details on erection equipment and tools, installation precautions, special procedures, Equipment alignment and tolerance, and safety requirements;
- (c) testing and commissioning procedures and operating instructions and precautions;
- (d) regular inspection and preventative maintenance frequency and procedures;
- (e) trouble inspection and preventative maintenance frequency and procedures;
- (f) spare and renewal parts data complete with illustrating assembly diagrams; and
- (g) complete set of all equipment nameplate data, electrical and mechanical drawings and instrumentation data.

Six copies of the final instruction manual, in the form approved by Dofasco in writing, shall be forwarded to the Authorized Representative one month prior to the first shipment of Equipment.

4.23 **Liability for Instruction Manuals** - The final instruction manuals delivered to the Authorized Representative pursuant to section 4.22 shall contain complete and accurate information with respect to the subject matter thereof.

4.24 **Supply of Tools** - Unless the Contract Documents otherwise expressly provide, Vendor shall provide, at its cost, all tools and other materials required to enable it to perform the Services.

4.25 **Identification** - All correspondence, drawings and instructions shall bear the Dofasco Purchase Order number, and Project number, job title and Vendor's contract number.

ARTICLE V

OBLIGATIONS OF DOFASCO

5.1 **Patent Infringement** - Dofasco shall hold Vendor harmless against all claims, demands, losses, costs, damages, actions, suits or proceedings arising out of Vendor's performance of the Contract which 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 arise out of i) any model, plan or design supplied to Vendor by Dofasco or (ii) any equipment or materials specified by Dofasco to be furnished by third parties that are not the result of Vendor's design or instructions; provided however, that:

- (a) Vendor shall notify Dofasco promptly in writing of any such claim or proceeding; and
- (b) Vendor hereby authorizes Dofasco to defend or settle, at its own expense, any such claim or proceeding and Vendor shall, at no cost to itself, assist Dofasco in defending against claims by third parties for such infringement.

ARTICLE VI

DELIVERY

6.1 **Inspection** - No Equipment shall be delivered or considered to be ready for delivery until Dofasco has performed such pre-delivery inspections and tests at Vendor's facilities as are specified in the Contract Documents, and the Authorized Representative has authorized the delivery thereof. Vendor shall give to the Authorized Representative timely notice (in accordance with section 4.8) of the dates and places where the various items of Equipment will be available for such inspection and testing and shall provide sufficient, safe and proper facilities at all times for such inspections by Dofasco or its authorized agents.

6.2 **Failure to Inspect** - In the event that Dofasco fails without reasonable cause to appear for inspection and testing at the place and time specified by Vendor pursuant to section 6.1, Vendor may inspect the Equipment of which Dofasco was notified and perform the tests which were planned for such time and place, and shall immediately forward to the Authorized Representative a copy of the test results. If such results are satisfactory to the Authorized Representative, the Equipment shall be deemed to have been inspected and tested by Dofasco and Vendor shall be authorized to deliver such Equipment to Dofasco.

6.3 **Point of Delivery** - Equipment shall be delivered F.O.B. the Site. Vendor shall be responsible for making all arrangements related to transporting the Equipment to the Site, for paying all freight charges and for the proper loading and blocking of the Equipment prior to transport. Subject to section 6.11, Vendor shall send a shipping notice showing car number or carrier and routing at least one working day prior to shipment.

6.4 **Partial Shipment** - No partial shipments will be allowed unless authorized by the Authorized Representative.

6.5 **Unloading** - The Equipment shall be unloaded at the Site at the expense of Dofasco, which shall furnish all labour, tools, rigging and appliances required therefor.

6.6 **Shipping Identification and Equipment Tagging**

6.6.1 **General** - Each piece of uncrated Equipment or part thereof, each crate and each skid will have the following shipping identification:

Dofasco Project No. (as shown on the Dofasco Purchase Order)

Dofasco gate and door number (as shown on the Dofasco Purchase Order)

Dofasco Purchase Order number

Vendor's contract number

Drawing and item number (where applicable)

Bill of material number (where applicable)

Weight and any special lifting instructions (if over 2,000 pounds)

Overall size of piece, crate, skid, etc.

Packages to be numbered consecutively but without duplication of numbers

Other information as assigned in the specifications which shall:

- (a) with respect to uncrated Equipment or parts thereof having a primed or unfinished surface, be marked in stencilling 1-1/2" high, and with respect to uncrated Equipment or parts having a finished surface, be marked on a weather resistant tag securely attached;
- (b) with respect to crates, be marked in stencilling 1-1/2" high; and
- (c) with respect to skids, be marked on a weather resistant tag securely attached.

Mechanical, electrical and instrumentation equipment shall be packaged and identified separately for shipment.

6.6.2 **Packing Slips** - Packing slips shall be securely attached to each piece of uncrated Equipment or part thereof, each crate and each skid in a water-proof envelope, and a second set of packing slips shall be enclosed in each crate. Each packing slip shall show all of the shipping information specified in section 6.6.1 and, if it relates to one or more crates, it shall show the number(s) of such

crate(s) with sufficient information to enable Dofasco to properly identify the contents thereof.

6.6.3 **Parts** - Each part shall be tagged with a tag which shows the quantity of the particular part shipped in that shipment and the name of the part as designated by Dofasco.

6.6.4 **Miscellaneous Items** - Miscellaneous items such as bolts and fittings shall be kept separate either by using separate containers or by partitioning containers, and each such container shall be tagged to identify its contents and their end use.

6.6.5 **Special Instructions** - Equipment requiring special precautions during shipping and storage shall be clearly marked on the outside of the shipping container, (eg. lifting marks) with specific instructions as necessary included in a durable envelope attached to the container and suitably labelled.

6.7 **Packaging** - All Equipment shall be adequately packaged, braced and protected against damage and climatic conditions which could occur in transit or while in storage at the Site.

6.8 **Sections** - All Equipment shall be shipped in proper shipping sections as outlined on drawings included in the Contract Documents.

6.9 **Shipment** - Where an individual lift is in excess of 5,000 pounds, Vendor or its agent shall notify Dofasco's Major Projects Material Coordinator, two working days prior to shipping.

6.10 **Crates** - Packing crates shall not contain goods for more than one Contract.

6.11 **Foreign Consignors**

6.11.1 **Customs Compliance** - In addition to complying with the preceding requirements of sections 6.6 to 6.10 inclusive, a Vendor who is shipping Equipment or parts thereof from an origin outside of Canada shall send one commercial invoice and four Canada Customs invoices (i) by mailing same directly to Dofasco's Customs Department, in the case of railway and ocean freight and parcel post shipments, and (ii) by attaching four of such Canada Customs invoices to the bill of lading and by mailing one copy of such Canada Customs invoice and the commercial invoice directly to Dofasco's Customs Department, in the case of goods shipped by motor transport. All goods shipped in less than carload or truckload shipments shall be numbered and the number

shown on the Canada Customs invoices in the column provided for that purpose. All skids and containers used to ship Equipment from an origin outside Canada shall comply with all rules and regulations of the Canadian government applicable thereto. Any demurrage charges which are incurred by Dofasco as a result of Vendor failing to comply with this section 6.11.1 will be deducted by Dofasco from the Contract Price otherwise payable to the Vendor.

6.11.2 **Pre-Delivery Notice** - A Vendor who is shipping Equipment or parts thereof from an origin outside of Canada shall send to the Authorized Representative by facsimile a pre-delivery notice, prior to shipment. Such pre-delivery notice shall show the following information:

- Dofasco Project No. (as shown on the Dofasco Purchase Order)
- Dofasco gate and door number (as shown on the Dofasco Purchase Order)
- Dofasco Purchase Order number
- Port of departure (airport or city)
- Estimated time of departure (E.T.D.)
- Port of arrival (airport or city)
- Estimated time of arrival (E.T.A.)
- Mode of transportation
- Name of carrier
- General description of goods
- Total pieces of Equipment or parts thereof and series of numbers identifying same (e.g. 100 pieces - Pc. #1 to 100)
- Gross weight of shipment

6.12 **U.S. Sourced** - With respect to any Equipment or parts thereof which qualify under applicable law as being manufactured in the United States, Vendor shall provide to Dofasco's Customs Department, prior to shipment of such Equipment or parts to Dofasco, an Exporter's Certificate of Origin establishing their origin in the United States.

6.13 **Water Transportation** - Any Equipment or part thereof which is transported by ocean shall be transported by Vendor in a vessel which is classified as Lloyd's Register Class 100A1 or BS or equivalent and which is not over 15 years of age, or in a vessel which has established and maintained a regular pattern of trading on an advertised schedule to load and unload at specified ports and which is over 15 years of age but not over 20 years of age.

6.14 **Suppliers** - Vendor shall cause Suppliers to observe the shipping instructions contained in this Article VI.

ARTICLE VII

TITLE AND RISK

7.1 **Title** - Title to and property in the Equipment and the components and parts thereof, whether or not in a deliverable state, shall pass to Dofasco at the date of Vendor's invoice to the extent of the percentage of the Equipment Price so invoiced.

7.2 **Risk** - Notwithstanding section 7.1, risk of loss shall pass to Dofasco at the time and place of delivery to Dofasco pursuant to Article VI. Until risk of loss passes to Dofasco, Vendor shall be responsible for any loss or damage occurring to the Equipment.

7.3 **Assignment** - Vendor shall not, either before or after title to the Equipment or any component or part 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.

7.4 **Licence to Dofasco** - To the extent that sections 3.5 and 7.1 do not effectively vest in Dofasco title to the Equipment or any part thereof or anything discovered, developed or created in connection therewith, Vendor hereby grants to Dofasco an irrevocable royalty-free licence 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 Equipment and all designs, systems and ideas incorporated therein, whether or not the same are patented. In the event that any item is designated as proprietary to Vendor by mutual agreement pursuant to paragraph (b) of section 4.1, Dofasco shall have the right to disclose such information to third parties as reasonably required for the purpose of operation, maintenance, and repair of the Equipment, provided that Dofasco shall first require such third parties to enter into secrecy agreements with Dofasco which protect the confidentiality of the information so designated as being proprietary.

ARTICLE VIII

INSURANCE

8.1 **Property Insurance** - Vendor shall furnish, within 30 days of the date of the Dofasco Purchase Order, evidence of All Risks Insurance in the name of the Vendor and of Dofasco as its interest may appear, covering physical loss or damage to the Equipment, in a form and with insurers acceptable to Dofasco. The basis of valuation for including the Equipment in such coverage shall be the full replacement cost of the Equipment to the Vendor. Unless otherwise directed by Dofasco, this insurance shall continue in force until the Delivery Date and Vendor shall, from time to time at Dofasco's request, provide evidence thereof.

8.2 **Comprehensive General Liability Insurance** - Vendor shall furnish within 30 days of the date of the Dofasco Purchase Order, evidence of Comprehensive General Liability Insurance in an occurrence form, including Products Liability or Completed Operations Liability Insurance in such amounts (not to be less than \$5,000,000), in such form and with such insurers as are acceptable to Dofasco. If requested by Dofasco in writing, Vendor shall add Dofasco as an additional Named Insured.

8.3 **Subrogation** - All insurance policies maintained by the Vendor in connection with the Work shall contain an express waiver of the insurer's rights of subrogation against Dofasco, its agents and employees.

8.4 **Endorsement** - All insurance policies which are required to be provided by this Article VIII 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) days after written notice of such change or cancellation shall have been given to all Named Insureds."

8.5 **Property Damage/Bodily Injury** - Vendor will be fully liable for and shall indemnify Dofasco in respect of any acts, omissions or neglect of itself, its agents and employees, its 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.

ARTICLE IX

VENDOR'S WARRANTIES

- 9.1 **Warranty Respecting Vendor** - Vendor warrants to Dofasco that:
- (a) unless otherwise specified in the Contract Documents, all materials incorporated in the Equipment shall be new and shall conform to the applicable specifications of the Canadian Standards Association and to all other applicable standards and codes;
 - (b) the Equipment and all engineering, manufacturing and other work relating thereto shall be free from defects and deficiencies in design, materials and workmanship and shall comply with the Contract Documents, including any performance guarantees or specifications set out therein;
 - (c) Vendor will forthwith correct or cause to be corrected without cost to Dofasco but in a manner approved by the Authorized Representative any such defects, deficiencies or non-compliance discovered prior to the expiry of the Warranty Period and shall at the option of Dofasco correct or replace without cost to Dofasco (including cost for labour and materials) but in a manner approved by the Authorized Representative any defects or deficiencies on the Project, the correction or replacement of which is required by reason of any breach of Vendor's warranty contained in paragraph (a) or (b) of this section 9.1; and
 - (d) in the event that Vendor is required to perform under paragraph (c) above, a second warranty period with respect to the defective or deficient components or parts of the Equipment corrected or replaced shall run for a period commencing on the day that such corrections or replacements are completed by Vendor and accepted by the Authorized Representative and ending one year thereafter.
- 9.2 **Services Warranty** - Where the Vendor performs services under the Contract, Vendor warrants that such Services shall be performed in accordance with the Contract Documents and with the degree of competence and care exercised by a qualified supervisor familiar with the installation of the Equipment in comparable circumstances. Any defect or deficiency in the Equipment or the Project resulting from Vendor's failure to exercise such a standard of care shall be corrected by Vendor at its sole expense but in a manner

approved by the Authorized Representative, provided that Dofasco shall notify Vendor of any claim hereunder within the Warranty Period.

9.3 **Effect of Warranties** - The warranties and remedies given in sections 9.1 and 9.2:

- (a) are in addition to and not in substitution for any warranties contained in the technical specification which form part of the Contract Documents but are in lieu of any other warranties or remedies 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 Vendor from the obligation to perform under sections 9.1 and 9.2 or to operate as a waiver of Dofasco's right to pursue any such remedies; and
- (c) shall survive any termination of the Contract under Article XIV with respect to all items of Equipment delivered prior to the Effective Date of termination and all items of Equipment subsequently completed and delivered in accordance with the terms of termination, provided that in the case of termination, all such warranties shall expire on the day which is 12 months after the last item of Equipment is delivered to Dofasco pursuant to Article VI.

9.4 **Notification** - Dofasco shall notify Vendor immediately of any defects in the design, construction or functioning of the Equipment which Dofasco considers to be a breach of the warranty in section 9.1, whenever such defects become apparent to Dofasco, including prior to or during the manufacturing, testing, installation or operation thereof, and shall notify Vendor immediately if it considers Vendor to be in breach of the warranty in section 9.2.

9.5 **Correction by Dofasco** - If necessary to maintain production operations, 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 Equipment and any defects or deficiencies on the Project, the correction or replacement of which is required by reason of any breach of Vendor's warranty contained in section 9.2 or in paragraph (a) or (b) of section 9.1. Vendor shall be responsible (as between Dofasco and Vendor) to any 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 9.5 shall limit or otherwise affect Vendor's warranty or obligations under section 9.1 or 9.2 and the provisions of paragraph (d) of section 9.1 shall apply mutatis mutandis to any component or part of the Equipment corrected or replaced pursuant to this section 9.5.

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

- (a) Vendor 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 Vendor or its Suppliers or their agents or employees or any other Person for whom they are responsible at law; and
- (b) Vendor'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 Vendor or Dofasco under any insurance policies maintained by Vendor relating to the Work.

ARTICLE X

CHANGE ORDERS

10.1 **Dofasco's Right to Change** - The Authorized Representative may at any time and from time to time, in the exercise of his discretion and without invalidating the Contract, request Vendor to make one or more changes to the Equipment as described in the Contract Documents at that date. No engineering shall be performed pursuant to section 10.2 otherwise than on the basis of an authorization in writing from the Authorized Representative.

10.2 **Response by Vendor** - Upon receipt from the Authorized Representative of a written request for a change to the Equipment, Vendor shall proceed forthwith to perform the engineering required to effect such change and shall advise the Authorized Representative within five working days of receipt of such request whether it considers such change to be a change in scope which will result in a change in the Contract Price or the date on which the Equipment will be delivered to Dofasco. If Vendor does not so advise the Authorized Representative within five working days, it shall not thereafter request a change in the Contract Price to reflect such change and it shall be deemed to have represented to Dofasco that the scheduled completion of the Work will be unaffected. If Vendor advises the Authorized Representative that it considers such change to be a change in scope, it shall within an additional five working days submit to the Authorized Representative its quotation of the cost of or credit for making such change (which credit shall include a proportionate credit for reduction of overhead and profit) which cost or credit shall be quoted on a firm price basis or on such other basis as the Authorized Representative may request and shall be submitted in such form, with such pricing breakdown and other supporting documentation and information as the Authorized Representative may require to fully evaluate the price and schedule impact of the change.

10.3 **Procedure for Change** - Vendor shall not proceed to effect a requested change until it receives written authorization from the Authorized Representative to proceed. In the event that:

- (a) the Authorized Representative determines not to proceed with the change, Dofasco shall compensate Vendor for the fair value of significant engineering services performed in the preparation and evaluation of such change;
- (b) the Authorized Representative accepts Vendor's submission, the Authorized Representative shall promptly prepare and deliver to

Vendor an amendment to the Dofasco Purchase Order directing the change to be made on the agreed terms and the Contract Price shall be adjusted accordingly;

- (c) the Authorized Representative does not accept Vendor's submission but wishes to proceed with the change, the Authorized Representative and Vendor shall negotiate in good faith the adjustment to the Contract Price and Vendor shall proceed forthwith to make the requested change; and
- (d) negotiations conducted pursuant to paragraph (c) above do not result in agreement on the adjustment of the Contract Price, Dofasco shall submit to arbitration the determination of the cost of or credit for the change and Vendor shall continue to make the requested change.

10.4 **Vendor's Right to Propose Changes** - Vendor may, from time to time during its performance of the Work, propose to the Authorized Representative any change to the Work or any part thereof which it considers necessary or desirable in terms of quality, efficiency or safety. Such proposals shall be made in writing, together with a statement of the impact of making such change upon the Contract Price and the scheduled delivery date, if any. Vendor shall not proceed to make any such proposed change without written authorization from the Authorized Representative.

10.5 **Variations Which Are Not Changes in Scope** - Notwithstanding sections 10.1 through 10.3 above, any modifications, substitutions or alterations required by the Authorized Representative or proposed by Vendor to remedy the Work or any part thereof which are necessary or desirable because of a default by Vendor in the performance of his obligations under the Contract shall not be deemed to be a change in scope and shall not affect the Contract Price or the scheduled delivery date, if any.

10.6 **Monthly Report** - Vendor shall send to the Authorized Representative as soon as practicable 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 XI

COMPUTATION OF CONTRACT PRICE

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ARTICLE XII

PAYMENT

12.1 **Payment of Equipment Invoices** - Subject to the other provisions of this Article and of Articles XIV and XV, the Equipment Price shall be paid in the following manner:

12.1.1 **Single Invoice** - Unless section 12.1.5 is applicable, Vendor shall invoice Dofasco an amount equal to the Equipment Price on or subsequent to the Delivery Date.

12.1.2 **Changes in Scope** - No amount may be included in Vendor's invoices for a change in the scope of the Work until the Dofasco Purchase Order has been amended to reflect such change in scope. If the change in scope was initiated by a Dofasco change order:

- (a) no amount may be included in the Vendor's invoice unless the work described in the change order has been completed; and
- (b) any invoice which claims compensation for a change in scope must separately identify the change order to which it relates.

12.1.3 **Partial Payment** - Dofasco shall pay Vendor an amount equal to the aggregate of (i) 90% of the amount of each invoice rendered pursuant to section 12.1.1, exclusive of the amount of any provincial sales taxes or goods and services tax shown thereon and (ii) 100% of the amount of any provincial sales taxes or goods and services tax shown thereon, within 30 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 any provincial sales taxes or goods and services tax shown thereon) which is not disputed and 100% of any provincial sales taxes or goods and services tax which relates thereto, and further provided that:

- (a) Dofasco shall not pay any amount of an invoice which is identified as compensation for a change in scope unless the Dofasco Purchase Order has been amended to reflect such change in scope; and
- (b) Dofasco shall not be obligated to pay to Vendor an amount in excess of 90% of the Equipment Price (after giving effect to any credit of which Vendor has advised the Authorized Representative pursuant to section 10.3), plus 100% of any provincial sales taxes or

goods and services tax which relates to the Equipment Price, except in accordance with section 12.1.4.

12.1.4 **Payment of Balance** - The amount withheld pursuant to section 12.1.3 (other than amounts withheld on account of disputes or rejections) shall be invoiced separately by Vendor and shall be paid:

- (a) as to 50% of such amount, on the later of 30 days after receipt of such invoice by Dofasco and 45 days after the Acceptance Date of the Equipment; and
- (b) as to 50% of such amount, on the latest of (i) 30 days after receipt of such invoice by Dofasco, (ii) 30 days after the expiration of the Warranty Period or (iii) 7 days after the Date of Final Completion.

12.1.5 **Progress Payments** - In the event that the Dofasco Purchase Order provides for progress payments:

- (a) if the Contract Documents establish "milestones" or recognizable degrees of completion, and assign a value thereto, Vendor shall invoice Dofasco monthly an amount equal to the incremental value assigned to any verifiable milestones achieved by Vendor during the month to which the invoice relates; and
- (b) in all other cases, Vendor shall invoice Dofasco monthly that percentage of the Equipment Price (exclusive of any adjustments pursuant to Article X, except as provided in section 12.1.2) which is equal to the percentage of the Work performed in the preceding month.

The provisions of sections 12.1.2, 12.1.3 and 12.1.4 shall apply mutatis mutandis; provided that no progress payment shall be made by Dofasco if Vendor is in breach of its obligations under section 4.20.1.

12.2 **Payment of Services Invoices** - Subject to the other provisions of this Article and of Articles XIV and XV, the Services Price shall be paid in the following manner:

12.2.1 **Single Invoice** - Unless section 12.2.5 is applicable, Vendor shall invoice Dofasco an amount equal to the Services Price on or subsequent to the date of the completion of the Services.

12.2.2 **Changes in Scope** - No amount may be included in Vendor's invoices for a change in the scope of the Work until the Dofasco Purchase Order has been amended to reflect such change in scope. If the change in scope was initiated by a Dofasco change order:

- (a) no amount may be included in the Vendor's invoice unless the work described in the change order has been completed; and
- (b) any invoice which claims compensation for a change in scope must separately identify the change order to which it relates.

12.2.3 **Partial Payment** - Dofasco shall pay Vendor an amount equal to the aggregate of (i) 90% of the amount of each invoice rendered pursuant to section 12.2.1, exclusive of the amount of any provincial sales taxes or goods and services tax shown thereon, and (ii) 100% of the amount of any provincial sales taxes or goods and services tax shown thereon, within 30 days of receipt of such invoice by Dofasco, unless Dofasco disputes any amount claimed on 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 any provincial sales taxes or goods and services tax shown thereon) which is not in dispute and 100% of the amount of any provincial sales taxes or goods and services tax which relates thereto, and further provided that:

- (a) Dofasco shall not pay any amount of an invoice which is identified as compensation for a change in scope unless the Dofasco Purchase Order has been amended to reflect such change in scope; and
- (b) Dofasco shall not be obligated to pay to Vendor an amount in excess of 90% of the Services Price plus 100% of any provincial sales taxes or goods and services tax which relates to the Services Price, except in accordance with section 12.2.4.

12.2.4 **Payment of Balance** - The amount withheld pursuant to section 12.2.3 (other than amounts withheld on account of disputes or rejections) shall be invoiced separately by Vendor and shall be paid on the later of 30 days after receipt of such invoice by Dofasco and 45 days after Vendor has completed or caused to be completed the performance of the Services.

12.2.5 **Progress Payments** - In the event that the Dofasco Purchase Order provides for progress payments, Vendor shall invoice Dofasco monthly with respect to each Contract for Services performed in the immediately preceding month, at the rates established by the Contract Documents and the provisions of sections 12.2.2, 12.2.3 and 12.2.4 shall apply mutatis mutandis; provided that no

progress payments shall be made by Dofasco if Vendor is in breach of its obligations under section 4.20.1.

12.3 **Invoicing and Payment of Taxes** - A Vendor who is licensed to collect federal goods and services tax or Ontario retail sales tax shall invoice Dofasco therefor in connection with the Work at the rates and otherwise in accordance with Dofasco's directions relating thereto on the Dofasco Purchase Order, and all invoices rendered by Vendor shall set out his registration number under the federal Goods and Services Tax Act. Such taxes shall be identified as separate amounts on any invoice for the Equipment or Services which give rise to such taxes, and shall be submitted with such documentation and information as Dofasco may require from time to time to enable Dofasco to identify the Equipment or Services in respect of which such taxes are payable. In the event that Vendor elects not to become a registrant under the federal Goods and Services Tax Act, and as a result is unable to obtain an input tax credit for goods and services tax paid, Dofasco shall not compensate the Vendor for the tax so paid.

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

12.5 **Documentation** - All invoices submitted by Vendor shall be original invoices and shall be accompanied by such supporting documentation as the Authorized Representative may reasonably require to verify the amounts for which payment is requested. Dofasco or its authorized agents shall be allowed rights of entry to and inspection of Vendor's and Suppliers' facilities for purpose of confirming the percentage completion of parts of the Equipment being produced therein which have been invoiced.

12.6 **Withholding Tax** - All amounts payable to Vendor pursuant to the Contract shall be reduced by the amount of any withholding tax exigible by the Government of Canada, if appropriate, in which event Dofasco shall deliver to Vendor a certificate establishing the payment thereof on Vendor's behalf.

12.7 **Liens Against Dofasco** - Notwithstanding any other provisions 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 Vendor unless and until Vendor, 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.

12.8 **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 Vendor (whether under the Contract or under any other agreement or for any other reason whatsoever) the aggregate of:

- (a) subject to section 9.6, (i) all costs incurred by Dofasco in testing the Work, if such tests indicate that Vendor 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 Vendor 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 Vendor's covenants and obligations hereunder; and
- (b) any debt owed by Vendor or any company affiliated with Vendor (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.

ARTICLE XIII

DEFECTIVE OR DELAYED WORK

13.1 **Notice of Default** - If Vendor:

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

Dofasco may notify Vendor in writing that it is in default of its contractual obligations and instruct it to correct the default, delay or failure aforesaid within five working days of receiving the notice. Vendor shall, subject to the provisions of section 13.2, make such correction forthwith upon receipt of such notice.

13.2 **Compliance with Notice** - If a correction cannot be completed within the five working days specified pursuant to section 13.1, Vendor shall be considered to be in compliance with Dofasco's instructions if it:

- (a) commences the correction 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.

13.3 **Failure to Comply** - If Vendor fails to comply with the provisions of section 13.1 or, if applicable, section 13.2, Dofasco may, without prejudice to any other right or remedy it may have, effect the correction and deduct the cost of such correction from the Contract Price otherwise payable to Vendor.

13.4 **Extension of Time** - Notwithstanding any of the foregoing provisions of this Article XIII, if Vendor is delayed in the manufacture of the Equipment by an act, omission or neglect of Dofasco or by labour disputes, strikes, lockouts, fire, unusual delay by common carriers or unavoidable casualties or by any other cause of any kind whatsoever beyond Vendor's

control, then the delivery date for the Equipment shall be extended for such reasonable time as the Authorized Representative may decide in consultation with Vendor and, subject to Article XIV, Dofasco shall not be entitled to manufacture the Equipment. No extension shall be made for delay:

- (a) resulting from an act or omission or otherwise through the negligence or fault of the Vendor or of a Supplier or any Person in the employ of either of them;
- (b) if written notice of the delay is given by Vendor 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 Vendor shall attribute such delay to Dofasco's failure to provide Vendor with instructions and less than 10 days shall have elapsed from the time such instructions are requested and the time they are received; or
- (d) if Vendor shall attribute its inability to meet the scheduled delivery date due to change(s) in the scope of the Work, unless the Authorized Representative agrees to an extension on this basis.

Vendor shall not be entitled to and hereby expressly waives recovery of any damages suffered by reason of any delay contemplated by this section 13.4 and any adjustment of the Contract Price in respect thereof, so that extension of time shall constitute Vendor's sole remedy for such delays.

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

ARTICLE XIV

SUSPENSION OR TERMINATION OF CONTRACT

14.1 Suspension

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

- (a) Dofasco and Vendor shall determine what action is required for this purpose and Vendor 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 Vendor in connection with such suspension; and
- (c) Dofasco shall reimburse Vendor for all costs reasonably and properly incurred by Vendor in connection with the suspension for actions approved by Dofasco in accordance with this section 14.1.1.

14.1.2 **Termination of Suspension** - Prior to the expiry of the period specified in any notice given under section 14.1.1, Dofasco shall either:

- (a) reinstate the Contract and notify Vendor in writing to recommence performance hereunder; or
- (b) give Vendor notice of termination pursuant to section 14.2 hereof;

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

14.1.3 **Meaning of Suspension** - Any rescheduling of the Work or orders by Dofasco to suspend production of individual items of Equipment shall not be considered a notice of suspension as contemplated in section 14.1.1 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 Vendor.

14.2 **Termination Without Cause** - Dofasco may at any time and from time to time, in its sole discretion and notwithstanding that Vendor is not in default hereunder, notify Vendor that the Contract or any part thereof is

terminated. If Dofasco shall terminate the Contract otherwise than pursuant to section 14.3:

- (a) Vendor shall cease and shall cause its Suppliers to cease all further supply of Equipment and Services required for the Work, or any part thereof specified in Dofasco's notice, except of such 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 Vendor shall forthwith determine the manner in which Vendor's obligations to 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 incorporated in the Equipment;
- (c) Dofasco shall be entitled to control on a continuing basis any expenditures made by Vendor in connection with the termination and to audit and verify all accounts paid by Vendor to third parties; and
- (d) Dofasco shall reimburse all costs properly incurred by Vendor in connection with the determination which have been approved by Dofasco in accordance with this section 14.2.

14.3 **Termination for Cause**

14.3.1 **Bankruptcy** - If Vendor 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 Vendor's property, Dofasco may, at its option, forthwith terminate the Contract.

14.3.2 **Notice of Default** - If Vendor fails to comply with the provisions of section 13.1 or, if applicable, section 13.2, Dofasco may, at its option, subject to section 13.4, terminate the Contract.

14.3.3 **Effect of Termination** - Upon any termination pursuant to section 14.3.1 or 14.3.2 (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 all Equipment located at Vendor's facilities or the facilities of any of its Suppliers, whether or not such Equipment is

in a deliverable state, and of all Equipment located in, about or upon the Site and for the purposes of this section title to all such Equipment shall be deemed to have passed to Dofasco notwithstanding the provisions of section 7.1 and Vendor shall assign to Dofasco all subcontracts and supply contracts designated by Dofasco;

- (b) finish the Work by whatever method it may deem expedient;
- (c) withhold any further payments to Vendor until the Work is finished; and
- (d) set off any costs incurred by Dofasco in finishing the Work against any accounts rendered by Vendor and owing to it under Article XII, 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 best accomplish such completion.

ARTICLE XV

ARBITRATION

15.1 **Submission to Arbitration** - In the event of any dispute between Dofasco and Vendor 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 within two working days thereafter Dofasco shall appoint an arbitrator, Vendor shall appoint an arbitrator, and the two so chosen shall appoint a third arbitrator. This paragraph shall constitute a submission within the meaning of the Arbitrations Act (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 Vendor. The arbitrator or arbitrators, as the case may be, shall have all the powers given to arbitrators by the Arbitrations Act or such successor legislation; may (subject to section 16.1) at any time and from time to time proceed in such manner as he or they may think fit on such notice as he or they may deem reasonable and after notice in the absence of either party; and may grant pre-award and post-award interest on any award made by them. The award and determination of the arbitrator or a majority of the arbitrators 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 Arbitrations 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 any such arbitration shall be in the discretion of the arbitrators.

15.2 **Effect on Work** - Notwithstanding the provisions of section 15.1, arbitration proceedings shall not be proceeded with until after the completion or alleged completion of the Work unless Dofasco or Vendor can show that the matter in dispute is of such nature as to require immediate consideration while evidence is available.

ARTICLE XVI

GENERAL

16.1 **Applicable Law** - The Contract and the Work shall be governed by and the Contract Documents construed in accordance with the laws of the Province of Ontario, and the law governing the procedure of any arbitration shall be the law of the Province of Ontario. The parties hereto agree to attorn to the jurisdiction of the courts of the Province of Ontario.

16.2 **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.

16.3 **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, 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 16.3. Notices given by mail or telefax shall be addressed as follows:

- (a) in the case of Dofasco, to the Head of Engineering, Engineering Department (Telefax: 416-548-4200), and the Vice President - Raw Materials, Purchases and Traffic, Purchasing Department (Telefax: 416-548-4062), ArcelorMittal Dofasco G.P, P.O. Box 2460, Hamilton, Ontario, L8N3J5;
- (b) in the case of Vendor, to Vendor at Vendor'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 an officer of Vendor, in the case of Vendor.

16.4 **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.

16.5 **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.

16.6 **Entire Agreement; Modification; Waivers** - The Contract Documents constitute the entire agreement between Dofasco and Vendor pertaining to the Work and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of Dofasco and Vendor; and there are no warranties, representations or agreements between Dofasco and Vendor 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 provisions, nor shall waiver constitute a continuing waiver unless otherwise expressly provided.

16.7 **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 thereof.

16.8 **Assignment** - Vendor 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 enure to the benefit of and be binding upon Dofasco and Vendor and their respective successors and permitted assigns.

16.9 **Interpretation** - In the Contract Documents, the singular includes the plural, the plural includes the singular and any gender includes the other genders.