

**ARCELORMITTAL DOFASCO G.P.****HAMILTON, ONTARIO**SPECIFICATION NO. O-ODCOVERING General Conditions -  
Engineering Consulting

DIVISION:

DATE:

DEPARTMENT:

ENG. REF.:

UNIT:

PREPARED BY:

**SUMMARY:**

A specification setting out commercial terms for engineering and design services.

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 purpose of the Contract the following terms shall have the meanings ascribed thereto:

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

"**Adjusted Contract Hours**" shall mean the Original Contract Hours, as adjusted pursuant to section 10.3;

"**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, but exclusive of the terms and conditions printed on the reverse side thereof; or (ii) the agreement entered into between Dofasco and the Consultant pursuant to which the Work is being performed, as the same may be amended from time to time pursuant to the provisions hereof;

"**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;

"**Burden**" shall mean premiums payable for unemployment insurance, workers' compensation, Canada Pension Plan, Consultant's pension plan, life insurance and such other charges as Dofasco may reasonably determine to be payroll additives;

"**Certificate of Completion for Engineering**" 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 Dofasco's invitation to bid and related documents (including Consultant'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 Consultant 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 the Consultant'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 Consultant pursuant to the provisions of such documents, including the General Conditions;

**"Contract Price"** shall mean the aggregate of all amounts payable to Consultant in accordance with Article XI;

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

**(Consultant's Quotation)** shall mean Consultant's written quotation on the Contract as accepted by the Authorized Representative(s);

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

**"Disbursements"** shall mean the costs so identified on Exhibit A hereto;

**"Discovery Period"** shall mean the period

- (a) commencing with (i) in the case of any part of the Work which is suspended pursuant to section 14.1 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 Work 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 Date of Final Completion and

(b) ending 24 months later;

"**Fee**" shall mean either Fixed Fee or Percentage Fee, as the case may be;

"**Fixed Fee**" shall mean the fee stipulated in the Dofasco Purchase Order where the overhead and profit components of the fee are combined and expressed as a single dollar amount, as the same may be adjusted from time to time pursuant to section 11.3.4;

"**General Conditions**" shall mean this Specification 0-0D, 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 Consultant;

"**Original Contract Hours**" shall mean the number of hours which Consultant and Dofasco have agreed are required to complete the Work, as originally set out in the Dofasco Purchase Order;

"**Payroll Costs**" shall mean the salary and wage costs of Consultant's Personnel directly engaged in the performance of the Work, together with Burden, at rates approved in writing by Dofasco;

"**Percentage Fee**" shall mean the Fee stipulated on the Dofasco Purchase Order where the overhead and profit components of the Fee are expressed as a single percentage, provided that if no percentage is specified, Consultant will be deemed to be using the percentage specified in the most recent reimbursable cost labour rate schedule accepted in writing by Dofasco; in either case, as the same may be adjusted from time to time pursuant to section 11.3.5;

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

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

"**Site**" shall mean the location on Dofasco's property which is designated in the Contract Documents as the site of the Project, or of the portion of the Project to which the work pertains;

"**Subcontractor**" shall mean a Person retained directly by Consultant, or indirectly by Consultant through a Subcontractor, to perform a portion of the Work, whether or not such Person is subject to some degree of supervision by Consultant in the performance of its work;

"**Supervisor**" shall mean Consultant's representative so designated by Consultant from time to time for purposes of this Contract;

"**Work**" shall mean and include all services to be performed and all models, blueprints, drawings and other documents and materials to be provided in accordance with or pursuant to the Contract Documents, and all designs, systems, processes and programs incorporated therein or represented thereby;

"**working day**" shall mean any day other than a Saturday, a Sunday or a holiday which is generally observed in the area where the Work is being performed;

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**

**[Deliberately left blank]**

## 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 and any instructions given by Dofasco unless otherwise expressly provided in writing by the Authorized Representative; and
- (g) 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 the Consultant with such additional instructions as the Consultant 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 communicated to the Consultant, 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) Consultant 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 Consultant in writing to proceed with the Work while the disagreement is being resolved.

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

3.6 **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 forthwith following the Date of Final Completion or earlier termination of the Work, except that Consultant may keep one copy of all documents for its Project record file, including a signed set of Contract Documents.

## ARTICLE IV

### OBLIGATIONS OF CONSULTANT

4.1 **Obligations Prior to Work** - Before commencing the Work, Consultant shall:

- (a) visit the Site, review all existing drawings pertaining to the Site and, so far as is reasonably practical, thoroughly familiarize itself with all physical features (including subsurface features), working restrictions and working limitations in, on and about the Site;
- (b) 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 noncompliance with applicable laws, ordinances, rules, regulations and codes relating to the Work;
- (c) where required by Dofasco, attend a safety meeting held by Dofasco;
- (d) designate as Supervisor a qualified Professional Engineer properly registered in the Province of Ontario, and advise the Authorized Representative of the identity of such Person;
- (e) advise the Authorized Representative of the starting date and approximate final completion date of the Work;
- (f) provide Dofasco with evidence of liability and other insurance coverage if so requested by Dofasco; and
- (g) provide the Authorized Representative with such other information and documentation as the Authorized Representative may reasonably require.

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



employ as a Subcontractor any Person to whose employment Consultant may reasonably object.

4.3           **Form of Subcontract** - Consultant's subcontracts and purchase orders with its Subcontractors shall contain provisions consistent with the provisions of the Contract Documents. Consultant shall provide to the Authorized Representative, at his request, copies of such subcontracts and of purchase orders issued by Consultant to Subcontractors, 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 Consultant.

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

4.5           **Supervision of Work** - Performance of the Work shall be diligently supervised by the Supervisor, who has authority to act for and bind Consultant, and all communications to the Supervisor will be deemed to have been made to Consultant at the time they are given to the Supervisor. Consultant shall not change the Supervisor except with the prior written consent of the Authorized Representative.

4.6           **Compliance with Law** - Consultant shall ensure that the Work complies with any and all applicable laws, codes, regulations and ordinances which are in effect at the Site on the date of Consultant's Quotation, 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 Consultant's Quotation which result in the Work ceasing to comply with then current law. Without limiting the foregoing, Consultant shall obtain all necessary permits not supplied by Dofasco, in accordance with Dofasco's specification in this regard.

4.7           **Inspection** - Consultant shall permit, and shall cause its Subcontractors to permit, Dofasco or Dofasco's authorized agent to enter the Consultant's offices or the offices of any Subcontractor and to perform whatever examination and/or testing of the Work it considers necessary or desirable.

4.8            **Safety Meetings** - During the performance of the Work, Dofasco shall have the right from time to time to require Consultant and any of its Subcontractors to attend, on one day's prior verbal or written notice, a safety procedure meeting with Dofasco.

4.9            **Co-ordination of Work** - Consultant shall schedule and co-ordinate the performance of the Work with the Authorized Representative and shall cause its employees, agents, servants and Subcontractors 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 the other activities on the Project; and
- (c)        connect with other parts of the Project as specified or shown in the Contract Documents.

4.10           **Responsibility for Design** - Consultant 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, Consultant 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           **Personnel** - If the Authorized Representative advises Consultant that it considers any Person employed in connection with the Work to be incompetent or negligent or unfit for his duties or for any other cause whatsoever, Consultant 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.

4.12           **Manner of Performance** - Consultant warrants that it shall perform and execute, or under its supervision, all of the Work in a diligent, timely, efficient, thorough, substantial and workmanlike and professional manner, in accordance with the Contract Documents and in accordance with the level of expertise commonly achieved by, and the professional standard generally applicable to, major, nationally recognized firms completing the Works.

4.13        **Notice of Deficiencies** - Consultant 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.

4.14        **Access to Records and Accounts** - Consultant shall maintain, at such location as the Contract Documents or the Authorized Representative shall approve, such books, records and accounts relating to the Work as the Authorized Representative shall require. If applicable, Consultant shall permit Dofasco's employees and agents access to its books and records and shall cause its Subcontractors to permit Dofasco's employees and agents access to their books and records for the purpose of verifying invoices rendered pursuant to section 12.3, if applicable.

4.15        **Discharge of Liens** - Consultant 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 Consultant) as a consequence of the performance of any portion of the Work. The cost thereof shall be borne by Consultant.

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

4.17        **Letters of Credit** - If the Contract Documents provide that Consultant shall obtain one or more letters of credit, Consultant 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.

4.18        **Patent Infringement** - Subject to section 5.1, Consultant 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 Consultant promptly in writing of any such claim or proceeding;
- (b) Dofasco hereby authorizes Consultant to defend or settle, at its own expense, any such claim or proceeding and, if necessary, to procure at Consultant's expense Dofasco's right to continue using the Work, provided that Dofasco shall be permitted by Consultant to participate in all discussions and decisions of Consultant with respect to such claims and proceedings and Dofasco shall, at no cost to itself, assist Consultant in defending against claims by third parties for such infringement; and
- (c) in the event that infringement is established and Consultant is unable, for a reasonable fee, to procure Dofasco's right to continue using the Work, Consultant 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.

4.19        **Confidentiality** - Consultant 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 Consultant 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 Consultant (as shown by written records) or which is generally known to the public (through no act of Consultant). Consultant shall ensure that its employees, its Subcontractors and their employees observe the confidentiality obligations contained in this section 4.19.

#### 4.20        **Drawings and Specifications**

4.20.1       **Delivery** - Consultant shall deliver to Dofasco drawings, schedules, information and data as required by the Contract Documents.

4.20.2       **Format** - All final drawings prepared by the Consultant shall be on Dofasco mylar or vellum supplied free issue and shall be such size as is required by Dofasco. Where applicable, drawings shall be geographically oriented to match the plant arrangement drawings. All specifications prepared by the Consultant shall be on Dofasco specification vellum supplied free issue. All drawings and specifications shall include Dofasco drawing or specification

numbers as provided to the Consultant and all detail cross-referencing shall be by Dofasco's drawing or specification numbering system.

4.20.3        **Transmittal** - Copies or originals of all drawings, specifications and calculations sent to Dofasco must be accompanied by a document transmittal. The document transmittal is to be addressed to the Authorized Representative indicating drawing/specification number, revision number, description/title, the quantity of each item sent and the reason for the transmittal (e.g. For Approval), as well as Dofasco's project number and the Dofasco Purchase Order number.

4.20.4        **Request for Approval** - Five copies of all completed drawings, design layouts and other related documents stamped (For Approval) will be forwarded by Consultant to the Authorized Representative for approval before construction or other activity is commenced with respect thereto. One copy of each drawing or document will be returned to Consultant by Dofasco, with any appropriate comments, and either marked with requests for revision or stamped (Approved).

4.20.5        **Deemed Approval** - Unless specified elsewhere in the Contract Documents, if Dofasco has not returned a drawing, design layout or other related document to Consultant within 15 working days of the date on which it was submitted to the Authorized Representative pursuant to section 4.20.4, and Dofasco has not notified Consultant by telefax to hold design pending receipt of instructions, Consultant shall notify the Authorized Representative by telefax that such document has 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 document, Consultant may commence detailing and construction.

4.20.6        **Drawing Certification** - Consultant shall not submit any drawing to Dofasco which has not been competently checked in accordance with the specifications contained in the Contract Documents and which has not been certified with the stamp of a competent professional engineer properly registered with the Association of Professional Engineers of Ontario. Consultant 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, if any, set out in the Contract Documents.

4.21           **Engineering Plan**

4.21.1 **Plan to be Furnished** - Consultant shall submit to the Authorized Representative for approval, if requested, the engineering plan and schedule pursuant to which Consultant proposes to carry out the Work, which shall also set out the dates by which Consultant requires Dofasco to furnish any drawings or information which are to be provided by Dofasco under the terms of the Contract. Consultant shall submit the plan in such form and by such date as is mutually agreed to between the Authorized Representative and Consultant.

4.21.2 **Alteration to Plan** - No alteration to the plan shall be made without the prior written approval of the Authorized Representative.

4.21.3 **Progress Reports** - Consultant shall monitor progress of all the activities specified in the 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 such month compared with the percentage completion planned for each activity; and
- (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.

4.21.4 **Revised Report** - If at any time Consultant's achieved progress falls behind the planned progress set out in Consultant's plan, or it becomes apparent that it will so fall behind, Consultant shall produce, at the request of the Authorized Representative, a revised 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, if any, provided for in the Contract.

## ARTICLE V

### OBLIGATIONS OF DOFASCO

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

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

5.2 **Datum for Lines** - Dofasco will provide Consultant with initial datum for lines and levels in the form of basic horizontal and vertical control datum (monuments and benchmarks).

5.3 **Consultation** - Dofasco shall notify the Consultant before using the Contract Documents, models or other documents furnished by Consultant in connection with the Work otherwise than as contemplated by the Contract.

## **ARTICLE VI**

### **DELIVERY**

**[Deliberately left blank]**



## ARTICLE VII

### TITLE AND RISK

7.1           **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 of commencement of the Work.

7.2           **Risk** - Notwithstanding section 7.1, Consultant shall bear the risk of loss of the Work and of any damage occurring thereto unless the Work is at the Site or is being returned by Dofasco from the Site to Consultant's premises.

7.3           **Patents and Copyright** - The Consultant and its Subcontractors shall, and shall cause their employees and agents to:

- (a)       disclose to Dofasco all inventions, designs, ideas and other know-how discovered, developed or created by them in the course of or as a result of performing the Work, whether patentable or copyrightable or not;
- (b)       assign the same to Dofasco for no consideration in addition to the Contract Price; and
- (c)       perform such other acts and execute such other documents, at no cost to themselves, but with the prior approval and at the expense of Dofasco, as may be necessary or desirable to vest in Dofasco the entire right, title and interest therein.

7.4           **Assignment** - Consultant 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.

7.5           **Licence to Dofasco** - To the extent that sections 3.5, 7.1 and 7.3 do not effectively vest in Dofasco title to the Work or any part thereof or anything discovered, developed or created in connection therewith, Consultant hereby grants to Dofasco a 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 VIII

### INSURANCE

8.1 **Comprehensive General Liability Insurance** - Consultant shall furnish to Dofasco, within 30 days of the date of the Dofasco Purchase Order, evidence of Comprehensive General Liability Insurance, covering bodily injury, personal injury and property damage in such amounts (not to be less than \$2,000,000), in such form and with such insurers as may be acceptable to Dofasco. Coverage shall remain in force until on-site construction work of the Project is completed unless Dofasco at its option, and with due notification to the Consultant, obtains and maintains Wrap Up Liability Insurance as outlined in this section 8.1 at the time that on-site construction work begins, protecting the Consultant against claims arising while Consultant is on Site and until the Date of Final Completion.

8.2 **Professional Liability Insurance** - Consultant shall furnish within 30 days of the date of the Dofasco Purchase Order and from time to time thereafter at the request of Dofasco until the expiry of the Discovery Period and any extended warranty period under section 9.1(c), evidence of Professional Liability Insurance in such amounts (not to be less than the contract price provided for in the Dofasco Purchase Order or \$500,000, whichever is greater), in such form and with such insurers as may be acceptable to Dofasco.

8.3 **Vehicle Insurance** - Consultant shall maintain and, if requested, shall furnish to Dofasco evidence of, Liability Insurance in respect of all vehicles owned, leased, or licensed by it and used in connection with the Work, in such amounts (not to be less than \$2,000,000), in such form and with such insurers as may be acceptable to Dofasco.

8.4 **Aircraft and/or Watercraft Insurance** - Consultant 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) Consultant shall add Dofasco as a Named Insured in any Hull insurance policy which is applicable to any watercraft owned by Consultant and used in connection with the Work; and
- (b) where Dofasco is providing liability insurance under section 8.1, such aircraft and watercraft liability insurance shall be in the joint names of Consultant, 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.

8.5           **Valuable Papers Insurance** - Consultant shall furnish to Dofasco, within 30 days of the date of the Dofasco Purchase Order, evidence of Valuable Papers Insurance with respect to plans, drawings and specifications used in or arising out of the Work, in such amounts, (not to be less than the contract price provided for in the Dofasco Purchase Order or \$1,000,000, whichever is less), in such form and with such insurers as may be acceptable to Dofasco.

8.6           **Deductible** - Any deductible amounts under policies of insurance maintained by the Consultant shall be for its account. Dofasco's Wrap Up Liability Insurance Policy shall contain a deductible for each accident to be for the account of Dofasco. Notwithstanding the foregoing, Consultant 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.

8.7           **Subrogation** - All insurance policies maintained by the Consultant in connection with the Work shall contain an express waiver of the insurer's rights of subrogation against the Consultant and/or Dofasco and their respective Subcontractors, agents and employees. Where Dofasco obtains Wrap Up Liability Insurance as outlined in section 8.1, such insurance shall contain a similar waiver of subrogation.

8.8           **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) days after written notice of such change or cancellation shall have been given to all Named Insureds".

8.9           **Property Damage/Bodily Injury** - Consultant will 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 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

### CONSULTANT'S STANDARD OF WORK

9.1            **Consultant's Covenants** - Consultant covenants with Dofasco that:

- (a) the Work (whether performed by Consultant or by its Subcontractors) shall be free from errors and omissions, shall be performed with the degree of competence and care exercised by experienced and qualified professional engineers in comparable circumstances, and shall comply with the Contract Documents;
- (b) Consultant shall bear all costs of redesign and reconstruction of the Project, including the removal and reinstallation of material, machines, and equipment, required to correct, to the satisfaction of the Authorized Representative, errors and omissions which are or result from a breach of the covenant contained in paragraph (a) above and which are discovered in the Work prior to the expiry of the Discovery Period or the extended discovery period, if applicable; and
- (c) in the event that Consultant is required to perform under paragraph (b) above, a second discovery period with respect to the parts of the Work corrected or replaced shall run for a period commencing on the day that such corrections or replacements are completed by Consultant and accepted by Dofasco and ending two years thereafter.

9.2            **Effect of Consultant's Covenants** - The covenants, rights and remedies given in section 9.1:

- (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, or payments made by Dofasco or approvals or certificates given by Dofasco, and no such examination, inspection, payment, approval or certificate shall or shall be deemed to relieve Consultant from the obligation to perform under section 9.1 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 delivered 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 shall expire on the second anniversary of the day on which the last part of the Work is delivered to Dofasco.

9.3            **Notification** - Dofasco shall notify Consultant immediately of any defects in the Work which Dofasco considers to be a breach of the covenants in section 9.1, when such defects become apparent to Dofasco.

9.4            **Limitation of Liability** - Consultant 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 Consultant, its agents, employees, its Subcontractors or any other Person for whom it is responsible.

## 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 changes to the Work as described in the Contract Documents at that date. No such change shall be made otherwise than in accordance with the provisions of this Article X.

10.2        **Change for Firm Price** - If the Dofasco Purchase Order provides that the Work is to be performed for a firm price, Consultant shall notify Dofasco in writing within five working days of receipt from the Authorized Representative of a written request for a change to the Work whether such change constitutes a change in the scope of the Work, and of any impact that Consultant is aware such change to the Work may have on the Project. If Consultant does not so advise the Authorized Representative within five working days, it shall not thereafter request a change to the Contract Price or the scheduling with respect to such change. If Consultant determines that a change in scope has occurred Consultant shall submit to the Authorized Representative, within an additional five working days, a statement of the cost of or credit for effecting such change (which credit shall include a proportionate credit for reduction of corollary overhead and profit) which cost or credit shall be quoted on such basis as the Authorized Representative may specify 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. Consultant shall not proceed to effect such requested change until the Authorized Representative issues a change order with respect thereto. Where the Authorized Representative accepts any statement of cost or credit delivered pursuant to this section 10.2, it shall advise Consultant in writing of its acceptance and the Contract Price shall be adjusted accordingly. If Dofasco and Consultant cannot agree on such statement, the matter shall be submitted to arbitration pursuant to Article XV.

10.3        **Change for Reimbursable Cost** - If the Dofasco Purchase Order provides that the Work is to be performed on a "reimbursable cost" basis, Consultant shall notify the Authorized Representative (within five working days of receipt from Dofasco of a written request for a change to the Work) of the then perceived change, if any, in the Original or the Adjusted Contract Hours, as the case may be, and of any impact that Consultant is aware such change to the Work may have on the Project. If Consultant does not so advise the Authorized Representative within five working days, it shall not thereafter request a change

in the Original or the Adjusted Contract Hours to reflect such change. Consultant shall not proceed with such change in the Work until the Authorized Representative issues a change order with respect thereto. In the event that the change is proceeded with, the Authorized Representative and Consultant shall negotiate in good faith the adjustment to the Original or the Adjusted Contract Hours and the Dofasco Purchase Order shall be amended accordingly. If the Authorized Representative and Consultant cannot agree on such adjustment, the matter shall be submitted to arbitration pursuant to Article XV.

10.4           **Consultant's Right to Propose Changes** - The Consultant 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 scheduled completion date (if any) and the Contract Price. Consultant 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 10.4 above, any modifications, substitutions or alterations required by the Authorized Representative or proposed by Consultant to remedy the Work or any part thereof which are necessary or desirable because of a default by Consultant 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 scheduled completion date (if any).

10.6           **Monthly Report** - Consultant 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

11.1 **Method of Computation** - The Contract Price shall be computed in accordance with this Article XI.

11.2 **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 amount of the contract price indicated on the Dofasco Purchase Order, as adjusted pursuant to section 10.2.

11.3 **Reimbursable Cost Contract**

11.3.1 **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) Payroll Costs incurred by Consultant in performing the Work;
- (b) Disbursements incurred by Consultant in performing the Work;  
and
- (c) the Fee stipulated in the Dofasco Purchase Order.

In the event that the Fee stipulated in the Dofasco Purchase Order is a Percentage Fee, the amount of the Fee shall be calculated by applying the applicable percentage to such Payroll Costs and Disbursements, and in all cases the Fee shall be calculated in accordance with and subject to the following provisions of this section 11.3.

11.3.2 **Limitation on Payroll Costs** - Consultant shall not include in Payroll Costs any Burden with respect to the regular or premium portion of salary costs incurred for overtime labour, unless previously approved in writing by the Authorized Representative.

11.3.3 **Limitation on All Costs** - Consultant shall not be reimbursed for the following costs:

- (a) any additional costs resulting from the Contract Documents being, at the time of their initial examination by Consultant, at variance with any applicable laws, rules, regulations and codes relating to

the Work if Consultant failed to notify the Authorized Representative in writing of such variance; and

- (b) all costs, expenses and damages attributable to Consultant'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 Consultant is liable under this section 11.3.3, Consultant shall forthwith reimburse Dofasco the amount of such costs.

11.3.4 **Adjustment to Fixed Fee** - Where the Contract provides that the Consultant will be paid a Fixed Fee, the Consultant shall be paid on account of its Fee an amount equal to the Fee so stipulated; provided that:

- (a) if the Adjusted Contract Hours are more than 115% of the Original Contract Hours, Consultant may request that Dofasco pay an additional amount on account of the Fee, which additional amount shall not exceed the product of:

$$\frac{\text{quoted Fixed Fee}}{\text{Original Contract Hours}} \times (\text{Adjusted Contract Hours} - 1.15 \text{ of Original Contract Hours})$$

- (b) if the Adjusted Contract Hours are less than 85% of the Original Contract Hours, 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:

$$\frac{\text{quoted Fixed Fee}}{\text{Original Contract Hours}} \times (\text{Adjusted Contract Hours} - .85 \text{ of Original Contract Hours})$$

11.3.5 **Adjustment to Percentage Fee** - Where the Contract provides that the Consultant will be paid a Percentage Fee, the Consultant shall be paid on account of its Fee an amount equal to the stipulated percentage multiplied by the Payroll Costs and Disbursements incurred by Consultant in performing the Work; provided that Consultant shall not be entitled to any Fee or any Fee adjustment with respect to:

- (a) the premium portion of overtime wages;

- (b) any costs which are assumed by Consultant pursuant to section 11.3.3; or
- (c) Payroll Costs which relate to hours worked in excess of the Adjusted Contract Hours;

and further provided that if the Adjusted Contract Hours are more than 125% of the Original Contract Hours, the Authorized Representative and Consultant shall negotiate an equitable reduction of the percentage figure used in calculating the Fee and shall apply such reduced percentage in calculating the Fee.

11.3.6        **Deviation from Fee** - Consultant 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 Authorized Representative or otherwise determined in accordance with this Article XI.

11.3.7        **Resort to Arbitration** - In the event that Consultant and the Authorized Representative cannot agree on the adjustment of the Fee, the Fee shall be determined by arbitration in accordance with Article XV.

## ARTICLE XII

### PAYMENT

#### 12.1 Invoicing

##### 12.1.1 Monthly Invoices -

- (a) Subject to paragraph 12.1.1(b), all payments to Consultant will be based on invoices prepared by Consultant in accordance with the Contract Documents. The Consultant shall submit to Dofasco one invoice per month with respect to each contract the Consultant is performing for Dofasco.
- (b) For Consultants subject to Dofasco's invoiceless pay process as determined by the Authorized Representative, unless otherwise noted, Dofasco will process an invoice (the "Invoice Payment Details") to itself from Consultant which shall represent the final invoice between the parties. Dofasco shall provide a copy of such invoice to Consultant. For clarity, there shall be no separate form of invoice issued by Consultant and Dofasco's Invoice Payment Details shall form the invoice setting out the payment to be made to the Consultant. The parties agree that such Invoice Payment Details shall be considered an invoice issued by Consultant to Dofasco.

In the event that Consultant provides certain services that are only partly subject to Dofasco's invoiceless pay process, Dofasco's Invoice Payment Details shall represent the final invoice from Consultant to Dofasco for all Dofasco Purchase Orders that are subject to Dofasco's invoiceless pay process and the Consultant may issue a separate invoice for those Services which are not subject to Dofasco's invoiceless pay process in accordance with paragraph 12.1.1(a). In the event that Consultant does generate a separate form of invoice for Purchase Orders that are subject to Dofasco's invoiceless pay process, such consultant-generated invoice shall be null and void and of no effect.

The parties acknowledge and agree that Consultant shall be responsible for remitting the applicable taxes indicated on the Invoice Payment Details to the Canada Revenue Agency/Revenue Quebec, as applicable.

Any objections to the information set out in Dofasco's Invoice Payment Details shall be communicated by the Consultant to AMD no later than five (5) working days following the issuance of AMD's Invoice Payment

Details failing which the Invoice Payment Details shall represent the final invoice between the parties.

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

12.1.3        **Documentation** - No payments shall be made to Consultant except on the basis of original invoices submitted by Consultant together with (i) a breakdown of the amounts of such invoices in mutually agreed form and (ii) such supporting documentation as the Authorized Representative may reasonably require to certify the amount for which payment is requested. If the Authorized Representative determines that any item included in an invoice is not sufficiently supported, Consultant shall provide such additional support for the questioned item as the Authorized Representative may request.

12.1.4        **Goods and Services Tax** - All invoices rendered by Consultant 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 Consultant 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 paid, Dofasco shall not compensate the Consultant for the tax so paid.

12.2        **Components of Invoice - Firm Price** - Where the Dofasco Purchase Order provides that the Work is to be performed for a "firm price":

- (a) if the Contract Documents establish "milestones" or recognizable degrees of completion, and assign a value thereto, Consultant shall invoice Dofasco monthly an amount equal to the incremental value assigned to any verifiable milestones achieved by Consultant during the month to which the invoice relates;
- (b) in all other cases, Consultant shall invoice Dofasco monthly that percentage of the Contract Price (exclusive of any adjustments pursuant to Article X, except as provided in section 12.4), which is equal to the percentage of the Work performed in the preceding month; and
- (c) as provided in section 12.1.4, the amount of goods and services tax shall be separately identified.

12.3            **Reimbursable Cost Contract** - Where the Dofasco Purchase Order provides that the Work is to be performed on a "reimbursable cost" basis:

12.3.1        **Reimbursable Costs** - Each invoice shall include all Payroll Costs and Disbursements incurred by Consultant in the immediately preceding month which are included in the Contract Price pursuant to Article XI, subject to section 12.4, and as provided in section 12.1.4, shall separately identify the amount of goods and services tax.

12.3.2        **Fixed Fee** - If the Fee stipulated in the Dofasco Purchase Order is 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 number of hours worked by Consultant's Personnel during the preceding month in performing the Work (exclusive of hours which result from a change in the scope of the Work) which are accepted by the Authorized Representative; and

C is the Original Contract Hours;

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

- (i)    if the Fixed Fee is increased pursuant to paragraph (a) of section 11.3.4, Consultant shall invoice Dofasco monthly as a separate amount, after the hours worked by Consultant's Personnel in performing the Work which are accepted by the Authorized Representative exceed 115% of the Original Contract Hours and until Consultant has received pursuant to this subparagraph (i) amounts aggregating the increment to the Fixed Fee, an amount equal to  $A \times B/C$  where:

A is the increment to the Fixed Fee;

B is the hours worked by Consultant's Personnel during the preceding month in performing the Work which are accepted by the Authorized Representative

and which are in excess of 1.15 of the Original Contract Hours;

C is the difference between the Adjusted Contract Hours and 1.15 of the Original Contract Hours; and

- (ii) if the Fixed Fee is decreased pursuant to paragraph (b) of section 11.3.4, the Authorized Representative and Consultant 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.

12.3.3 **Percentage Fee** - If the Fee stipulated in the Dofasco Purchase Order is a Percentage Fee:

- (a) the amount payable as a Fee shall be calculated in accordance with the provisions of section 11.3.5 on the Payroll Costs and Disbursements incurred by the Consultant in the preceding month, subject to section 12.4, which are accepted by the Authorized Representative;
- (b) this Fee shall be invoiced as a separate item on the monthly invoice;
- (c) if the percentage used in calculating the Percentage Fee is reduced pursuant to section 11.3.5, the Authorized Representative and Consultant shall negotiate in good faith a reasonable method for invoicing any balance of the Fee payable.

12.4 **Changes in Scope** - Where a change in the scope of the Work has been initiated by a Dofasco change order:

- (a) no amount may be included in Consultant'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 amount involved and the change order to which it relates.

12.5 **Payment of Invoices** - Subject to the other provisions of this Article and of Article XIII:

12.5.1 **Partial Payment** - Subject to section 12.5.3, Dofasco shall pay Consultant an amount equal to the aggregate of (i) 90% of the amount of each invoice, 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 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 Consultant an amount in excess of 90% of the Contract Price (after giving effect to any credit of which Consultant has advised the Authorized Representative pursuant to section 10.2), plus 100% of any provincial sales taxes or goods and services tax which relates to the Contract Price, except in accordance with section 12.5.2.

12.5.2 **Payment of Balance** - The aggregate of all amounts withheld pursuant to section 12.5.1 (other than amounts withheld on account of disputes or rejections) shall be invoiced separately by Consultant supported by a fully executed Certificate of Completion for Engineering 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.

12.5.3 **Exception** - Where the Contract Price, based on the Original Contract Hours, is less than \$100,000, invoices shall be paid in full except for any portion thereof which is disputed or rejected by Dofasco.

12.6 **Additional Information** - Consultant shall provide to Dofasco such information and supporting documentation as Dofasco may require to determine the rate of Canadian customs duty and brokerage payable by Dofasco with respect to any part of the Work.

12.7 **Withholding Tax** - All amounts payable to Consultant 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 Consultant a certificate establishing the payment thereof on Consultant's behalf.

12.8            **Liens Against Dofasco** - Notwithstanding any other provision of the Contract Documents, Dofasco shall not be required to pay all or any portion of any amount withheld pursuant to the provisions hereof unless and until Consultant, 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.

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

- (a)    subject to section 9.4, (i) all costs incurred by Dofasco in testing the Work, if such tests indicate that Consultant 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 Consultant 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 Consultant's covenants and obligations hereunder; and
- (b)    any debt owed by Consultant or any company affiliated with Consultant (within the meaning of the Canada Business Corporations Act) to Dofasco or any company affiliated with Dofasco (within the meaning of the Income Tax Act (Canada)) under any other agreement or for any other reason whatsoever.

## ARTICLE XIII

### DEFECTIVE OR DELAYED WORK

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

- (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 Subcontractors 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 Consultant 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. Consultant shall, subject to the provisions of section 13.2, make such correction forthwith upon receipt of such notice.

13.2 **Compliance with Notice** - If the correction of the default cannot be completed within the five working days specified, Consultant 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.

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

13.4 **Extension of Time** - Notwithstanding any of the foregoing provisions of this Article XIII, if Consultant 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 other cause of any kind whatsoever beyond Consultant's control, then the completion date for the Work shall be extended for such reasonable time as the Authorized Representative may decide in consultation with Consultant and, subject to Article XIV, 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 the Consultant or a Subcontractor or any Person in the employ of a Subcontractor;
- (b) if written notice of the delay is given by Consultant to the Authorized Representative more than five days after its commencement, providing however, that in the case of a continuing cause of delay only one notice shall be necessary;
- (c) if Consultant shall attribute such delay to Dofasco's failure to provide Consultant 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 Consultant shall attribute its inability to meet the scheduled completion date for the Work to change(s) in the scope of the Work, unless the Authorized Representative agrees to an extension on this basis.

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

Consultant shall also give the Authorized Representative immediate notice in writing of the cessation of any delay in respect of which Consultant 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 Consultant a written notice requiring Consultant to suspend all performance under the Contract for a single period not to exceed six months whereupon:

- (a) Dofasco and Consultant shall determine what action is required for this purpose and Consultant 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 Consultant in connection with such suspension; and
- (c) Dofasco shall reimburse Consultant for all costs reasonably and properly incurred by Consultant 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 Consultant in writing to recommence performance hereunder; or
- (b) give Consultant 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 individual portions of the Work 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 Consultant.

14.2            **Termination Without Cause** - Dofasco may at any time and from time to time, in its sole discretion and notwithstanding that Consultant is not in default hereunder, notify Consultant that the Contract or any part thereof is terminated. If Dofasco shall terminate the Contract otherwise than pursuant to section 14.3:

- (a)      Consultant shall cease and shall cause its Subcontractors to cease all further supply of labour, equipment and services required for the Work, or any part thereof specified in Dofasco's notice, except of such labour, equipment or services as Dofasco may determine to be necessary for any purpose;
- (b)      Dofasco and Consultant shall forthwith determine the manner in which the Consultant's obligations to Subcontractors 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 Consultant in connection with the termination and to audit and verify all accounts paid by Consultant to third parties; and
- (d)      Dofasco shall reimburse all costs properly incurred by Consultant in connection with the termination which have been approved by Dofasco in accordance with this section 14.2.

14.3            **Termination for Cause**

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

14.3.2        **Notice of Default** - If Consultant 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 the Site and of all of Consultant's materials situated in, about or upon the Site and Consultant 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 Consultant until the Work is finished; and
- (d) set off any costs incurred by Dofasco in finishing the Work against any accounts rendered by Consultant 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 will best accomplish completion.

## ARTICLE XV

### ARBITRATION

15.1        **Submission to Arbitration** - In the event of any dispute between Dofasco and Consultant 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, Consultant 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 Consultant. 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, she or they may think fit on such notice as he, she 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 Consultant 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 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 received. 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 Consultant, to Consultant at Consultant'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 Consultant, in the case of Consultant.

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 Consultant pertaining to the Work and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of Dofasco and Consultant, and there are no warranties, representations or agreements between Dofasco and Consultant 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 the 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.

16.7        **Severability**    -    If any provision of the Contract Documents shall be or shall 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.

16.8        **Assignment**    -    Consultant 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 Consultant 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.

## EXHIBIT A

### Disbursements

1. Reasonable travel and living expenses incurred by Consultant's employees while away from home in connection with the Work.
2. Driving mileage allowance for business use of personal and company vehicles outside the Hamilton/Burlington area, which shall not exceed the rate published by Dofasco in effect at the time of such use. Rental automobiles at cost (receipts required).
3. Long distance telephone charges directly related to the Work.
4. Reproductions submitted to Dofasco of drawings and reports.
5. Third party computer services.
6. Fees for drawing approvals.
7. Licences and permits as required by government and various regulatory authorities.
8. Charges of outside consultants for special professional advice and sub-contracted Work, subject to prior agreement with the Authorized Representative before engaging same.
9. Charges for site surveys, soil investigations, inspection and laboratory testing.
10. Duty and brokerage costs.
11. Models and modelling supplies, with prior approval of the Authorized Representative.
12. Microfilm and photographic supplies, with prior approval of the Authorized Representative.
13. Courier services engaged at the request of the Authorized Representative.

14. Non-refundable provincial sales taxes paid by Consultant in connection with the above items.