

**GENERAL CONDITIONS FOR CONSTRUCTION AGREEMENTS  
NORTH AMERICA**

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## ARTICLE 1. APPLICATION

These General Conditions apply to the work to be performed on the Project. Subcontractors, if any, shall be supplied with a copy of these General Conditions and no contracts or arrangements with them shall be in conflict with these General Conditions.

## ARTICLE 2. DEFINITION OF TERMS

- A. The term "Owner," shall mean APCI unless specifically noted otherwise in the Construction Agreement.
- B. The term "APCI" shall mean Air Products and Chemicals, Inc. and its affiliates and any successor entities.
- C. The term "Contractor" shall mean the company awarded this work by APCI and named on Page 1 of the Construction Agreement.
- D. The term "Engineer" shall mean the designated representative of the Owner in charge of the Project for the Owner, at the site of the Project, or elsewhere.
- E. The term "Project" shall mean the facilities, installations, structures or other subject matter related to the Construction Agreement.
- F. The term "Subcontractor" shall mean any individual, firm, or corporation, other than an employee of the Contractor, who contracts with the Contractor or any other Subcontractor to furnish labor and materials in connection with the Project. Nothing herein, however, shall be construed as establishing any contractual relationship between APCI and any Subcontractor.
- G. The term "Construction Agreement" shall mean that certain construction agreement between APCI, Owner (if applicable) and the Contractor (and any amendments or supplements thereto) to which these General Conditions are attached and incorporated therein.
- H. The term "Contract" shall mean the Construction Agreement and these General Conditions (and any amendments or supplements thereto).

## ARTICLE 3. CHANGES, EXTRAS AND CLAIMS

- A. APCI may, at any time, by a written order duly signed by APCI's duly authorized representative, and without notice to any sureties, make any changes in, additions to or deletions from the work to be performed under this Contract provided that such changes, additions or deletions are reasonable related to the original scope of the work hereunder. If any such changes, additions or deletions so ordered cause an increase or decrease in the cost to the Contractor of its performance hereunder or in the time required for performance, an equitable adjustment shall be made on the basis of such increase or decrease and this Contract shall be modified in writing accordingly; provided that, (a) in the case of any addition to or deletion from any portion or portions of the work for which a unit price is specified in this Contract, any such addition or deletion shall be made solely on the basis of such unit price, (b) in case of any addition to any portion or portions of the work for which no unit price is specified in this Contract or APCI, at its sole discretion, decides not to use the specified unit prices, the increase in the consideration payable hereunder, if any, shall be on the basis of a mutually agreed upon fixed price, or on the basis of a time and material charge as provided in this Contract, and (c) in case of any deletion to any portion or portions of the work for which no unit price is specified in this Contract, APCI shall be entitled to a credit based upon the resulting decrease in the Contractor's costs of performance hereunder, without any deduction from such credit of any loss by the Contractor of any expected or anticipated profits, whether or not relating to the deleted work and, any such claim is hereby expressly waived and released by the Contractor. In the event APCI and Contractor cannot agree to a mutually acceptable fixed price as described in (b) above, a guaranteed maximum price will be established and the Contractor shall perform the work on a time and material basis; however, APCI shall in no event be liable for any amount in excess of the guaranteed maximum price.
- B. Any claim by the Contractor for an adjustment under this Article must be asserted in writing within ten (10) calendar days from the date a change is ordered. Even though the parties may fail to agree upon the extent or amount of adjustment hereunder, the Contractor shall nevertheless proceed promptly and diligently with the prosecution of the work as so changed; provided however, that Contractor shall not be deemed to prejudice its claims to an adjustment by so proceeding. If Contractor desires to submit a claim for an adjustment under this Article for some reason other than a change in the scope of work, including but not limited to claims for delay, acceleration or productivity impacts, notice of Contractor's intent to make such claim shall be made within ten (10) calendar days from the date Contractor intends to allege that the work was impacted.
- C. If any extra, additional or different work is performed by the Contractor without a previous written order therefor, signed by APCI's duly authorized representative, no addition to the consideration provided in this Contract shall be made on account of such extra, additional or different work, and the Contractor shall be conclusively deemed to have waived and released any claim for extra or additional compensation therefor, or for any damages in connection therewith.
- D. Work performed on the basis of time and material shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays, and holidays) unless the Contractor obtains the prior written consent of APCI's duly authorized representative. If Contractor should perform work on a premium time basis without obtaining said consent, then all costs relating to the premium time portion shall be borne solely by the Contractor without recourse to APCI.
- E. For each and every item of work performed on a time and material basis, Contractor shall submit daily reports which shall list the time and trades used, materials consumed, and hours and types of rental equipment used. Such reports shall be submitted no later than the following workday to APCI's representative for approval. Invoices submitted for work performed on a time and material basis must be supported by duly approved copies of such daily reports. APCI shall be under no obligation to pay invoices which are not supported as described herein.
- F. Contractor shall take and afford APCI the advantage of all reasonably available cash and trade discounts, rebates, allowances, credits, salvage, commissions and other similar items. Contractors shall require its Subcontractors to take and afford Contractor the advantage of all reasonably available cash and trade discounts, rebates, allowances, credits, salvage, commissions and other similar items, which advantage shall be passed on in full to APCI. Contractor shall bear the cost and/or loss of failure to comply with this provision unless such failure is found to be justifiable.

## ARTICLE 4. SHORT-TERM WORK ACCELERATION

If, for reasons other than inexcusable delays or other fault of the Contractor, APCI requests that the completion of work hereunder be accelerated and, in such event, authorizes the performance on a premium time basis of the whole or any part of such work designated in writing by APCI's representative, the Contractor agrees to accelerate the designated part of the work and APCI agrees to reimburse the Contractor for the actual out-of-pocket costs for the direct labor involved in the premium time basis. Contractor may be entitled to reimbursement for additional Indirect Labor and additional Construction Equipment costs needed for execution of Short-Term Acceleration as approved by APCI. Not all accelerations will result in the need for extra Indirect Labor or Construction Equipment.

## ARTICLE 5. DRAWINGS; PARTS LISTS; INSTRUCTIONS

- A. Where drawings are required, the fabrication, delivering, or installation of the work covered by drawings shall not commence prior to the APCI approval.
- B. The Contractor shall furnish, at its own expense, all drawings, parts lists, catalogs, instructions and the like which, in the opinion of APCI, are required in connection with the work hereunder. All drawings shall show the title and location of the work and shall clearly show the relation of the various parts to the main members and lines of the structure or facility to which the work relates. Where fabrication of the work depends upon field measurements, the Contractor shall make the same and note them upon the drawings before submitting such drawings for APCI's approval. All drawings shall be submitted for APCI's approval in the order in which materials are needed at the Project site. Approval of drawings by APCI, the Engineer or the Owner, regardless of whether such drawings have been changed in order to obtain such approval, shall not relieve the Contractor from responsibility for defects, insufficiencies, errors or omissions therein or defects, insufficiencies, errors or omissions resulting therefrom; and any and all additional and corrective work and material required by any such defects, insufficiencies, errors or omissions shall be performed by the Contractor at its own expense.

## **ARTICLE 6. WORKMANSHIP AND MATERIALS; INSPECTION**

- A. Except to the extent otherwise specifically provided in this Contract, all workmanship, material, equipment and articles incorporated in the work covered by this Contract shall be in accordance with the specification and new and unused, of first-class quality and of the best grade of their respective kinds for the purposes intended. Where workmanship, material, equipment or articles are referred to in this Contract as "equal to" any particular kind of standard, APCI shall decide any question of equality. Where called for in this Contract or when directed by APCI, the Contractor shall, at its own expense, submit samples of materials or other items to be used in the work. Materials, equipment and other articles installed or used without specific written approval from APCI shall be at the risk of subsequent rejection.
- B. All workmanship, materials, equipment and articles shall be subject to inspection, examination and test at any and all times during the manufacture, installation or construction thereof and at any and all places where such manufacture, installation or construction are carried on. APCI shall have the right to reject or require the correction of materials and workmanship which are defective or which are not in strict accordance with this Contract. Rejected workmanship shall be satisfactorily corrected and rejected material, equipment and other articles shall be replaced, without charge therefor, and the Contractor shall, at its own cost and expense, promptly segregate and remove from the Project the rejected material, equipment and articles. If the Contractor fails to proceed at once with the replacement of rejected material, equipment or articles, or the correction of defective workmanship, APCI may, by contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or may terminate the right of the Contractor to proceed as provided in Article 9A below, the Contractor and its sureties, if any, being liable for any extra costs or damage as provided in the said Article 9A.
- C. Should it be considered necessary or advisable by APCI, at any time before final acceptance of all of the work hereunder, to make an examination of work already completed, by removing or tearing out the same, the Contractor shall, upon request, promptly furnish all necessary facilities, labor and materials therefor. If such work is found to be defective in any material respect due to the fault of the Contractor or any of its Subcontractors, the Contractor shall bear all the costs and expenses of such examination and of satisfactory reconstruction. If however, such work is found to meet the requirements of this Contract, the Contractor shall be reimbursed for actual costs of such examination and reconstruction on a time and material basis in accordance with this Contract. No failure of APCI or any of its representatives to discover or reject materials or work not in strict accordance with this Contract shall be deemed an acceptance thereof or a waiver of defects therein. No payment by APCI or partial or entire use or occupancy of the work or premises shall be construed as an acceptance of work and materials not in strict accordance with this Contract. It is expressly understood that no representative of APCI or the Owner is authorized to change any provisions of this Contract, including those pertaining to inspection and tests, except as provided in Article 27 hereof; and that the presence or absence of any representative of APCI or the Owner will not relieve the Contractor from its responsibility for work and materials not in strict accordance with this Contract.
- D. Final inspection of the work will be made upon the completion of the Contractor's activities, it being expressly understood that APCI's acceptance of the work, pursuant to such final inspection, shall not relieve the Contractor from the consequences of any defect (whether or not latent), shall not relieve the Contractor from its guarantee or warranty obligations, and shall in no event be deemed a waiver by APCI, the Engineer or the Owner, in any respect or degree whatsoever, of any of the terms or provisions of this Contract or any of the rights of APCI, the Engineer or the Owner in the event the Contractor shall have failed, or shall fail, to comply strictly with the terms and provisions thereof.

## **ARTICLE 7. SUBCONTRACTING; ASSIGNMENT**

- A. No part of this Contract shall be subcontracted by the Contractor except with the express prior written approval of APCI. No subcontract shall in any event relieve the Contractor from its obligations to APCI hereunder, nor purport to bind APCI or the Owner thereunder, but each such subcontract shall contain provisions binding the Subcontractor to a strict compliance with the terms and provisions of this Contract, and shall contain a provision permitting the assignment thereof by the Contractor to APCI. APCI shall have the right to assign to the Owner, at any time, any or all of its rights, title, interests or obligations under this Contract.
- B. Except as otherwise previously approved in writing by APCI, neither this Contract nor any interest therein, nor any claim thereunder, nor any sum or sums which may become due or owing to the Contractor as a result of its performance thereof, shall be assigned, transferred, or pledged by the Contractor.

## **ARTICLE 8. OTHER CONTRACTS**

APCI may perform work not covered by this Contract and may award contracts and subcontracts to others for such work. The Contractor shall fully cooperate with APCI and/or such other contractors and subcontractors and carefully fit and coordinate its own work with the work of APCI and such other contractors and subcontractors, neither committing nor permitting any act, omission or condition which might interfere with or adversely affect the performance of work by APCI or any other contractor or subcontractor.

## **ARTICLE 9. TERMINATION**

- A. **TERMINATION FOR CAUSE**

If (a) Contractor files a petition in bankruptcy or is adjudged a bankrupt, or a petition for a dissolution or a reorganization of its affairs is filed by or against the Contractor, or if it shall make an assignment for the benefit of its creditors, or if a receiver, trustee or liquidator, whether temporary or permanent, shall be appointed for the Contractor or for any of its property; or (b) a judgment shall be entered against the Contractor and shall remain unsatisfied or unbonded for three days after the date of entry; or (c) the Contractor shall fail, refuse or neglect to supply a sufficient number or skilled workmen and other employees, or to prosecute the work or any part thereof with the diligence required to insure its progress and completion within the time or times provided in this Contract; or (d) the contractor shall fail to pay when due any obligation which it shall incur in the performance of the work covered by this Contract; or (e) the Contractor shall fail, during the progress of the work, to comply with the requirements, directions and instructions of APCI, the Engineer, or the Owner; or (f) the Contractor shall fail to perform the work covered by this Contract to the satisfaction of APCI, the Engineer, or the Owner, or (g) Contractor shall breach any of the material terms or provisions of the Contract; then, and in any such event, APCI, without prejudice to any other right or remedy which it shall or might possess, may, at any time, terminate the right of the Contractor to proceed hereunder, in whole or part, by mailing a five (5) day written notice to that effect to the Contractor. Such termination may, as specified in such notice, affect all of the work hereunder or at APCI's option may affect only part of the work. Upon termination, pursuant to the provisions of this Clause A, APCI may take over the terminated work and prosecute it toward or to completion, by contract or otherwise, utilizing such services of others as in APCI's sole discretion may be suitable, qualified or competent for the purpose. In the event that APCI takes over the terminated work and prosecutes it toward or to completion, by contract or otherwise, APCI may, for such purpose, take possession of and utilize such materials, machinery, equipment, tools, plant and appliances as may be on the site of the Contractor's work and, in APCI's opinion, necessary therefor. APCI may also exercise all rights, options and privileges of the Contractor under its subcontracts, purchase orders or otherwise, in connection with the Contractor's work, and the Contractor expressly covenants and agrees that it will promptly assign its rights thereunder to APCI, as and to the extent requested by APCI. Upon termination under the provisions of this Clause A, the Contractor shall not be entitled to receive any further payment until the entire Project has been fully completed and accepted by APCI or the Owner. If the unpaid balance of the compensation to be paid the Contractor hereunder shall exceed the cost and expense of completing the work (which shall include the cost of insurance, taxes, overhead and all managerial, administrative, legal, and inspection services as well as a reasonable profit and all damages for delay), or if, in the event the work is not prosecuted towards or to completion, such unpaid balance shall exceed the costs and damages to which APCI is entitled under the provisions hereof, or by law, such excess shall be paid to the Contractor by APCI; if such cost and expense and/or such damage shall exceed such unpaid balance, the Contractor shall be liable to APCI for the excess.
- B. **TERMINATION FOR CONVENIENCE**

In the event of the temporary or permanent abandonment or relinquishment by APCI or the Owner, in whole or in part, of the Project or the facilities of the Project to which the work hereunder relates, the undertakings of the Contractor hereunder may be terminated by APCI at any time, in whole or in part, upon the mailing or delivery by APCI to the Contractor of a notice of termination specifying the extent to which the Contractor's undertakings shall be terminated and the date upon which such termination shall become effective, which shall not be earlier than four (4) days from the date of such notice of termination. The undertakings of the Contractor may also be terminated under this clause B for the convenience of APCI or the Owner. Upon receipt of a notice of termination hereunder, the Contractor shall take such steps in

discontinuing its performance as may be specified in such notice, and in addition thereto, and to the extent required by APCI, immediately discontinue the work and the placing of orders for materials and supplies in connection with its performance under this Contract, and/or make every reasonable effort to procure cancellation of existing orders and contracts upon terms satisfactory to APCI or the Owner, and/or assign to APCI, as and to the extent required by APCI, all the rights, title and interests of the Contractor under such orders and/or contracts. The Contractor shall thereafter be entitled to retain or receive payment, in accordance with the provisions of this Contract, based upon its costs and expenses incurred prior to the notice of termination or prior to the date specified in such notice for discontinuing its work, and its costs and expenses incurred in taking such steps as are specified herein or in such notice of termination; provided, however, that in no event shall the total of all amounts received and to be received by the Contractor, exclusive of any amounts representing termination costs and expenses which would not have been incurred except for termination, hereunder, exceed the total Contract Price specified in this Contract as the same may be modified in accordance with the provisions of this Contract.

#### **ARTICLE 10. DELAYS**

- A. This Article sets forth the agreed exclusive prerequisites to the assertion by Contractor against APCI of any claim for damages for or arising by reason of any delay, obstruction, retardation or suspension of the work.
- B. Upon encountering any delay whatsoever, irrespective of whether the same shall result from the voluntary act of APCI, matters within or without the control of APCI, Contractor shall, if it desires to protect its rights to make a claim for damages resulting from any particular occurrence or event causing delay, give written notice to APCI of such delay, stating with particularity the date of the onset of such delay and the apparent cause of such delay. Absent the giving of such notice with the particularity required herein within the ten (10) day period following the first day of such delay, Contractor shall be forever barred from subsequently claiming damages for such delay, it being understood that the giving of notice as provided herein with the detail required herein is an absolute condition precedent to any claim by Contractor against APCI for damages for delay.
- C. Contractor may be entitled to a reasonable extension of time within which to complete its performance as a result of delays, to the extent caused by actions or inactions of APCI, and may be entitled to equitable compensation for such delays. The offering of such extension by APCI shall, to the extent of such extension, excuse Contractor from compliance with any "time-of-the-essence" provision otherwise applicable to the completion of the work by Contractor.
- D. In no event shall APCI be liable for any damages for delay where such delay results from labor problems, unavailability of materials, weather conditions, cancellation of insurance, act of God; epidemics, pandemics or other threats to health or safety; terrorism; or from acts or omissions on the part of any contractor (including Contractor herein), subcontractor, or any carrier serving the Project site.

#### **ARTICLE 11. GUARANTEE**

The Contractor expressly guarantees and warrants that all workmanship and material performed or furnished under this Contract will conform to the specifications, drawings, samples and other descriptions furnished or adopted by the Contractor and with all applicable terms, provisions and requirements of this Contract, and the Contractor agrees to, and shall immediately upon demand of APCI or the Owner, and at the entire cost and expense of the Contractor, repair and/or replace in a manner satisfactory to APCI and the Owner, any and all work and/or material furnished by the Contractor which may be or may have become defective due to faulty materials and/or workmanship, and/or due to unsatisfactory functioning of plant, equipment or other material furnished hereunder, for which the Contractor is at fault, appearing within one (1) year from the completion of the work hereunder, its acceptance, or the initial operation of the plant, equipment or other matters furnished hereunder, whichever is later; and in connection with such repair and/or replacement Contractor shall make good all damage caused to other work or materials due to such required replacement and/or repair. Additionally, the Contractor shall accept backcharges for all Contractor related errors that occur during the supply, fabrication, or installation of the Contractor's Work on the Project, where contractor did not meet the requirements of the specifications or drawings of the contract

#### **ARTICLE 12. COMPLIANCE WITH LAWS AND REGULATIONS**

- A. The Contractor shall, at its own cost and expense, comply with, and procure the compliance of all of its Subcontractors and suppliers with, all applicable laws, regulations, court decrees, ordinances and other rules of the United States Government (or other government having jurisdiction thereof) and of the state, territory, municipality, or other political subdivision having or exercising jurisdiction in connection with any of the work hereunder. Such compliance shall include among other things, the procuring of all necessary permits and licenses in connection with the work, the compliance with all applicable wage and hour laws and regulations and all other laws, regulations and court decrees dealing with or relating to the employment of persons and to employment practices and the payment of contributions, premiums, and taxes required by such laws or regulations. Contractor shall bear any costs of delay that result from the failure to have or display such permits and licenses as are required by law for Contractor's or Subcontractor's personnel to perform field services under the contract. APCI reserves the right to cause Contractor's or Subcontractor's personnel to verify at the time of such field services the possession of any such required permits and licenses, including, without limitation, the Transportation Worker Identification Credential (TWIC). Where requested by APCI and/or the Owner, Contractor shall furnish a written certification of compliance with laws by Contractor and Subcontractors, which shall be signed by a duly authorized representative of each party providing such certifications.
- B. APCI is a United States Government contractor. APCI complies with Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans Readjustment Assistance Act of 1974 (VEVRAA), as amended, and their respective implementing regulations. All companies with which APCI does business in the amount of \$10,000 or more per year are notified that the equal employment opportunity (EEO) obligations of the Executive Order and the Rehabilitation Act apply to them as a subcontractor. All companies with which APCI does business in the amount of \$25,000 or more per year are notified that the EEO obligations of VEVRAA, as amended, apply to them as a subcontractor. All companies with which APCI does business in the amount of \$50,000 or more per year are notified that they are obligated to comply with the affirmative action plan provisions of the laws referenced above.
- C. Contractor shall submit to APCI a company-wide Commercial Subcontracting Plan, which is updated annually and prepared pursuant to APCI's Corporate Policy on purchasing from Small Business, Small Disadvantaged Business, and Women-Owned Business concerns in compliance with Public Law 95-507 and FAR 52.219-9 for government contracts and subcontracts for Commercial Products exceeding \$500,000 in value.
- D. Contractor and all of its Subcontractors shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that the Contractor and all of its Subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity national origin, protected veteran status or disability.

#### **ARTICLE 13. INDEMNIFICATION**

- A. The Contractor, except for the negligence or wrongful conduct of a) APCI and/or b) third party contractor, subcontractor, and/or vendor brought by APCI onto the project, shall defend, indemnify and hold harmless APCI and the Owner, and their respective affiliates, directors, officers, employees and representatives (the "Indemnified Parties"), and hold each of them harmless from any liability, charge, cost, expense, claim, action or suit for injury or death of any persons, including employees of the Contractor, or for damage to property arising out of the performance of this Contract by Contractor and the Subcontractors. Contractor shall obtain appropriate insurance coverage with respect to such liability. It is specifically understood that the Contractor hereby accepts and assumes exclusive liability for, and shall defend, indemnify and hold harmless the Indemnified Parties against: (a) the actions noted above and (b) the payment of all contributions, taxes or premiums payable under any federal or state unemployment insurance law or any federal or state social security act measured by or upon the payroll of employees, by whomsoever employed, engaged in the performance of work undertaken by the Contractor in this Contract, and any and all other taxes which may be levied or assessed because of the Contractor's employment of persons or the Contractor's purchase of services or supplies for the performance of its undertakings in this Contract. Contractor shall obtain from each of its Subcontractors an indemnification agreement identical to this Article, which agreement shall name the Indemnified Parties as beneficiaries of such indemnification agreement.

- B. Notwithstanding anything to the contrary, under no circumstances shall either party be liable to the other for consequential, incidental, special, punitive or indirect loss or damage including, but not limited to, loss of use of the Project, loss of product, loss of profits, whether such loss or damage arises in contract, negligence, strict liability or otherwise, however, for greater certainty, Contractor's indemnification obligations above with respect to third party injury and damage shall not be considered special, incidental, indirect, consequential or punitive damages.

#### **ARTICLE 14. CONDITIONS OF SITE OF WORK**

The Contractor hereby expressly warrants, covenants and agrees that, prior to the execution of this Contract, it has made a complete and careful examination, independent of any information, representations, descriptions or estimates by APCI or the Owner or any of their representatives, of all of the Contract Documents applicable to the work hereunder and of all the conditions and features of the Project site which might be important in the prosecution of its work, and has fully apprised itself of all obstructions, difficulties or conditions which it will or might encounter in the prosecution of the work including, but not limited to, subsurface conditions identified in the Contract Documents, road conditions, and the availability of labor and utilities. The Contractor expressly agrees that neither APCI nor the Owner nor any of their representatives have made any representations of any kind, nature, or description, written or oral, express, implied or otherwise, concerning any of the foregoing, and relying solely and exclusively upon its own evaluation of the conditions which it will or might encounter during the progress of its work, the Contractor does hereby expressly waive and release any and all demands, claims and causes of action against APCI and/or the Owner which the Contractor might have, possess or assert by reason of any alleged representations, warranties, tests, estimates, descriptions and statements by APCI and/or Owner not expressly set forth in this Contract.

#### **ARTICLE 15. PATENT INFRINGEMENT**

The Contractor shall, at its own cost and expense, save and hold APCI, the Owner, and their representatives, assigns or successors, harmless against any and all claims or suits based upon any allegation that the manufacture, use or sale of any materials, supplies, and equipment furnished hereunder infringe any letters patent; provided, however, that neither such obligation nor any other obligation under this Article shall be imposed upon the Contractor in the case of any materials, supplies and equipment required by APCI to be the product of a particular manufacturer or manufacturers, or the design of which is not the responsibility of the Contractor hereunder and instead is supplied by the Owner, APCI or any of their other subcontractors, agents or representatives. The Contractor's obligation under this Article, where such obligation arises, shall include, among other things, the obligation to furnish a defense for APCI and/or the Owner or, at the option of APCI and/or the Owner, to furnish to APCI and/or the Owner all necessary assistance and cooperation to enable APCI and/or the Owner to defend any such claim or suit, all at the Contractor's own expense. If, in the Contractor's opinion, any such claim or suit might ultimately be resolved in the claimant's favor and the Contractor so notified APCI of the same in writing, or if, in any such suit or proceeding, any order is issued restraining or enjoining the use or sale of any such materials, supplies or equipment, the Contractor shall, at its own expense, and as APCI or the Owner shall direct, secure to the benefit of APCI or the Owner, the right to continue using or selling such materials, supplies and equipment, by suspension of the injunction, by procuring a license, or otherwise, or shall replace such materials, supplies and equipment with noninfringing materials, supplies or equipment, or modify them so that they become noninfringing, or remove said enjoined materials and refund the sum paid therefor, together with, in any event, satisfying any order or judgment for the payment of money.

#### **ARTICLE 16. INDEPENDENT CONTRACTOR; NO PRIVILEGE**

It is understood and agreed that the Contractor shall be and remain an independent contractor, maintaining direction and control of its employees and operations, and neither the Contractor nor anyone employed by the Contractor shall be deemed to be a servant, employee or agent of APCI or the Owner. If APCI is not designated as Owner, it is understood that APCI shall be and remain an independent contractor of the Owner, and neither APCI nor anyone employed by APCI shall be deemed to be a servant, employee or agent of the Owner, and that the Owner is not a party to this Contract and no provision of this Contract shall be deemed, interpreted or construed to create any contractual relationship between the Contractor and the Owner, or subject the Owner to any duty, obligation, liability or responsibility to the Contractor for any cause or purpose whatsoever.

#### **ARTICLE 17. TAXES**

If a Federal, state, or local tax liability, which is to be reimbursed by APCI and/or the Owner hereunder, is asserted or threatened by a taxing authority against Contractor, Contractor shall notify APCI promptly and provide APCI and/or the Owner with the opportunity to protest and contest (either directly or through the Contractor) such asserted liability, both administratively and in any subsequent judicial proceedings. No claim for any such tax shall be compromised or settled without APCI's prior written consent. Any right Contractor otherwise has hereunder to be reimbursed for any tax (including any interest and penalties) shall be deemed waived if Contractor fails to provide APCI and/or the Owner with an opportunity to protest and contest the asserted tax liability.

#### **ARTICLE 18. LABOR DISPUTES**

The Contractor agrees to promptly notify APCI of any labor dispute which has occurred or is imminent and which has, will or might affect the Contractor's performance hereunder, or any part of the Project, giving such full and complete information concerning the same as APCI may request. To the end that the work under this Contract or the work required upon any part of the Project may not be interrupted by labor disputes, the Contractor shall employ only such labor and workmen as, in the exclusive judgment of APCI, will work in harmony with other trades upon the Project.

#### **ARTICLE 19. PROTECTION OF CONTRACTOR'S AND SUBCONTRACTOR'S PROPERTY AND WORK**

The Contractor shall, at all times, and at its own expense, protect its labor, materials, appliances, supplies, tools, plant, equipment, work in progress and completed work against any damage, injury, destruction, theft or loss. APCI shall be liable or responsible therefor to the extent that the same shall have been caused by the active negligence or willful misconduct of any employee of APCI; otherwise, APCI shall not be liable or responsible for any damage, injury, loss, theft or destruction howsoever or by whomsoever caused, except when caused by another subcontractor of APCI. The foregoing provisions shall likewise apply to the property and work of Subcontractors and to the tools, equipment and supplies of any of its or their mechanics, laborers, or workmen. Contractor shall supply, install and maintain all necessary protection and security for its work and for materials and supplies not incorporated or already incorporated in the work to insure against damage by weather conditions. Any damaged work, materials or supplies shall be replaced at no additional cost to APCI or Owner, but only to the extent such damage is caused by Contractor or its subcontractors.

#### **ARTICLE 20. PAYMENT FOR MATERIALS AND LABOR; LIENS**

- A. Before the Contractor shall become entitled to any payment of retained monies under the terms of this Contract, it shall first submit completed Release and Affidavit (Exhibit I) and completed Release of Liens (Exhibit II) forms certifying that all of the labor, services, materials, equipment or supplies used or furnished in, to, about, upon, for or in connection with the work covered by this Contract, in excess of \$5,000.00 whether or not the same had been furnished at the site of the work or elsewhere, have been fully and completely paid, prior to the date of the Contractor's application for payment, such prior payment covering all materials furnished, labor performed, services rendered and equipment supplied by any and all persons, directly or indirectly, in, to, or upon the work covered by this Contract, whether or not such persons be agents, servants or employees of the Contractor and whether or not a contractual relationship exists between the Contractor and such persons. If any such person shall notify APCI of any unpaid claims for work, labor and services performed, or materials, equipment, tools or supplies furnished, APCI, in addition to all of the rights granted by the terms and provisions of this Contract and provided Contractor is paid, less any disputed monies, in accordance with the terms of this Agreement, shall have the right to withhold the amount of such claim out of any monies due or to become due to the Contractor and, in addition thereto, APCI shall have the right (unless the Contractor

shall have notified APCI that the Contractor denies liability for such claim and furnished for APCI's and the Owner's benefit such security and other indemnification on account of such claim, as is approved by APCI) to make payment of any such claim from and out of any monies due or to become due to the Contractor, such payment to be deemed a payment to the Contractor, under the terms and provisions of this Contract. The Contractor further agrees that, in the event that any suit be brought by any such person against the Owner or APCI, under any bond furnished by APCI to the Owner, or under any statute authorizing such suit, then, and in that event, the Contractor shall fully indemnify, defend and hold APCI and the Owner harmless from and against any and all claims, liabilities, losses, costs, counsel fees, expenses, damages, judgments, decrees, or appeals, by reason thereof, irrespective of whether or not the Contractor shall have received final payment and irrespective of whether or not the person suing had any contractual relationship with the Contractor, it being the intent of the parties hereto that the Contractor shall always be and remain exclusively liable to any and every person for any and all labor performed, materials furnished, services rendered or equipment supplied in, to, upon, about, for or in connection with the work covered by this Contract.

- B. Provided payments are made to Contractor, less any disputed monies, in accordance with the terms of this Agreement, the Contractor does hereby covenant and agree that it will not, at any time or for any reason or cause, file or permit to be filed by any Subcontractors, materialmen, suppliers or laborers, any liens against the premises to which this Contract relates, or any part thereof, or against any building or buildings or other improvements erected or to be erected thereon, or file or permit to be filed by any Subcontractors, materialmen, suppliers, or laborers, any claim of any kind upon or under any performance or other bond which the Owner or APCI may have furnished, or assert, or permit to be asserted, any other claim of any kind, nature or description under any statute, state or federal, for any work or services performed or materials furnished, by, to or for the Contractor under this Contract or for any other thing which might have been done by or for the Contractor pursuant to this Contract or any modification thereof, or for any other ground, reason or cause whatsoever; and the Contractor, provided payments are made, less any disputed monies, in accordance with the terms of this Agreement, does hereby further covenant and agree that it does hereby release, for itself and its Subcontractors, materialmen, suppliers and laborers, the premises which are the subject of the work covered by this Contract, and each and every part thereof, and any and all buildings that may be erected thereon, from any and every lien, charge, claim or demand of any nature cause or ground, it being the intent of the parties hereto that the Contractor shall only possess those rights and remedies against APCI which are created by the terms and provisions of this Contract and are based upon the contractual relationship between APCI and the Contractor as defined and limited by this Contract. Pursuant to the covenant herein, Contractor agrees to keep the property to which this Contract relates free and clear of all liens, claims and encumbrances arising out of the performances of this Contract, and shall, at its own cost and expense take immediate action to remove any liens or encumbrances filed against the property by any Subcontractors, materialmen, suppliers or laborers.

## ARTICLE 21. DIMENSIONS, LEVELS

Contractor shall be solely responsible for all locations, dimensions and levels, and no pleas as to instructions or orders received from any source, other than the information contained in deeds, plot drawings, and specifications, or in written orders of APCI, shall justify departure from the dimensions and levels required by the drawings. Contractor shall take its own measurements at the site, verifying same with the drawing and at the building, and will be held responsible for the proper fit of completed work in positions.

## ARTICLE 22. PAYMENT AND TERMS THEREOF

- A. Invoices shall be submitted in triplicate once a month only to the address specified by APCI.
- B. The amount of any monthly invoice shall be based upon the percentage satisfactorily completed of the various parts of the work, which shall include only the materials actually and physically incorporated into the Project during the period, as set forth in the cost breakdown submitted by the Contractor and approved by APCI, plus additional and/or extra work incorporated into this Contract via amendment during the month for which the invoice is submitted, less amounts previously billed and less the retained percentage as set forth in Clause D of this Article, and subject to the provisions of Article 20. Construction Change Orders shall be invoiced only once upon satisfactory completion of the Construction Change Order work. Partial billings of Construction Change Orders shall not be accepted by APCI.
- (1) Additional or extra work added to the original Contract Price by means of addendum or Construction Change Orders shall be subject to the retained percentage as set forth in Clause D of this Article.
  - (2) Contractor shall submit separate invoices for:
    - (a) Progress Payments
    - (b) Retainage
    - (c) Construction Change Orders
- C. A code of account numbers may be required by the Owner. Contractor shall break down, if requested, total contract cost into these accounts for use by the Owner in his accounting, and by the Contractor for progress payments. Progress payments shall be submitted to the Owner's field representative, for his approval, in the quantities and manner determined by APCI's Construction Engineering Department. Contractor is to furnish the completed cost breakdown per the code of amount, within two weeks after requested by APCI.
- D. Eighty-five (85) percent of the value of the work actually completed and invoiced by the Contractor and approved by APCI will be paid forty-five (45) days after receipt of invoice by APCI Accounts Payable Department. The balance of fifteen (15) percent thereof will be retained by APCI to insure the Contractor's full and complete performance of its obligations hereunder and shall become due and payable upon the acceptance by APCI and the Engineer of all material and work as being completed in accordance with this Contract, the determination of which may, at the option of APCI, be made by appropriate tests or inspections. Any and all tests or inspections shall be made within thirty (30) calendar days from the completion of the Contractor's performance hereunder. In such event such tests or inspections are not made within such time, through no fault on the part of the Contractor, the said retained percentage shall become due and payable at the expiration of such thirty (30) calendar day period.
- E. (1) As used in this Article, the following terms have the following meanings:
  - (a) "Contract Price," as used herein, shall mean the price set forth in or calculated by reference to this Contract, adjusted for any Construction Change Orders and adjusted pursuant to any Contract addenda;
  - (b) "Final Payment," as used herein, shall mean that payment by APCI to Contractor which, when added to all payments theretofore made by APCI to Contractor on account of the work and this Contract shall equal the Contract Price less the Retainage;
  - (c) "Retainage," as used herein, shall mean the excess of the Contract Price (adjusted for any Construction Change Orders and adjusted pursuant to any amendment) over the final payment as said Retainage is established in or by reference to this Contract.
- (2) Acceptance of Final Payment by Contractor shall be evidenced by the negotiation of any check or draft utilized to effect such payment where such acceptance is not otherwise specifically evidenced in writing. Acceptance of Final Payment by Contractor shall be deemed Contractor's acknowledgment supported by and in consideration of such payment, that:
  - (a) The only amount remaining due to Contractor from APCI by reason of this Contract and the work is the Retainage;
  - (b) Contractor shall have, except with respect to its entitlement to the Retainage, by receipt of Final Payment released and forever discharged APCI from any and all claims for extra or additional work, damages for breach of contract, negligence on the part of APCI relating to the work or the Project site, damages for delaying performance of the work, interest, or any other claims of any nature whatsoever.
- (3) Unless and until Contractor shall accept Final Payment and shall comply with all the requirements for payment of the Retainage set forth in this Contract, it shall not, notwithstanding anything contained in this Contract to the contrary, be entitled to payment of the Retainage.
- F. The Contractor agrees that any and all funds which it shall receive from APCI under and pursuant to the terms and provisions of this Contract will constitute trust funds in the hands of the Contractor to be held by it as trustee for the benefit of all persons, firms and corporations which have performed work, labor and services or furnished materials, equipment, tools, machinery or supplies in, to, about, or upon the work covered by this Contract for which they are entitled to assert a claim. The Contractor shall not, at any time or for any reason whatsoever, apply any of the funds received from APCI for any other purpose than the payment of the obligations incurred by it in the performance of its duties under this Contract until such time as all of such obligations have been fully and completely paid and discharged. The Contractor agrees that it will permit APCI, at any time requested by APCI, to examine its books and records for the purpose of ascertaining the Contractor's use and disposition of the funds received by it from APCI under the terms of this Contract.

- G. If at any time there shall be evidence of any lien or any other claim of any kind or description for which APCI or the Owner or the Project or any parts of facilities thereof may become liable, and which is chargeable to the failure of the Contractor to pay its Subcontractors, materialmen, suppliers or laborers, and/or when damage shall be caused by the Contractor to another subcontractor's work, then APCI shall have the right to retain out of any payment then due or thereafter to become due an amount sufficient, in the opinion of APCI, to completely indemnify APCI against any such lien or claim. If there shall prove to be any such lien or claim after all payments are made, the Contractor shall refund to APCI all monies that the latter may be compelled to pay in discharging or disposing thereof and of any other claim made in consequence of the Contractor's default and this obligation of the Contractor shall not be affected by the Final Payment.
- H. Contractor is required to submit all invoices no later than ninety (90) days following completion of work, failing this requirement shall relieve APCI from any obligation to make payment of invoices submitted later than ninety (90) days, unless delay of invoicing was directly attributable to the acts or omissions of APCI or was otherwise agreed to in writing by APCI.
- I. If the related Construction Agreement and/or scope of work requires the Contractor to develop a critical path network (CPN), no invoices will be paid until such CPN is received and approved by APCI

**ARTICLE 23. BONDS; INSURANCE**

- A. Unless exempted by APCI, in writing, the Contractor shall provide Payment and Performance bonds in the amounts set forth in this Contract and shall furnish such bonds on the forms provided by APCI, prior to commencing work on the Project site.
- B. Liability Insurances: The Contractor agrees to furnish, prior to starting work at the Project site(s), certificate(s) of insurance on the forms furnished by APCI, or on a form acceptable to APCI, showing evidence of full compliance for the complete duration of the job, with the requirements established under the Insurance Coverage Requirements (Exhibit A) attached hereto. The Contractor further agrees that it will be responsible that the above compliance be also met by its Subcontractors, agents and suppliers doing work at the Project site(s).
- C. "All Risk" property damage and business interruption insurance: APCI or Owner has furnished, at its own expense, "All Risk" property damage and business interruption insurance coverage which includes the interests of the Contractor and lower tier contractors (hereinafter collectively referred to in this Article as "Contractors") for their respective ownership in the work hereunder (including labor, materials and equipment to be incorporated into the work) with respect to loss or damage to the work to be performed or incorporated hereunder, including related labor, materials and equipment to be incorporated by APCI and the Contractors hereunder. However, this insurance shall exclude the following: 1. nuclear and war risks, 2. loss or damage caused by governmental actions, 3. loss or damage to the tools or equipment (not to become part of the work) owned or rented by the Contractors, and 4. other exclusions common to an "All Risk" property damage and business interruption policy, such as faulty materials, faulty workmanship and errors in design. The Contractors shall be solely responsible for the first \$50,000 in cost for each loss covered by the policy, unless the loss is caused by the sole negligence of APCI. When a loss or damage occurs which is not caused by the sole negligence of APCI and for which there is coverage, the Contractors shall promptly make the proper detailed accounting of the costs thereof to APCI and shall deduct \$50,000 per occurrence from such accounting. If the loss which is not caused by the sole negligence of APCI and is not covered by the policy, the Contractor shall be solely responsible for the entire cost. Upon request APCI will furnish the Contractors with evidence of such insurance. In connection with the insurance required hereunder, all policies shall be written or endorsed to provide that the insurer will endeavor to notify any parties in interest, in writing, at least thirty (30) days prior to cancellation or material change.

**ARTICLE 24. TREATMENT OF DOCUMENTS; PATENTS AND INVENTIONS**

- A. Any information, data, specifications, drawings, documents, blueprints or instructions submitted to the Contractor by APCI or by the Owner, their representatives or agents, or prepared by the Contractor, its employees, agents or contractors, including contracts, vouchers, expenditures and the like in connection with any work performed or to be performed hereunder, or any non-public, proprietary information obtained through performance under this agreement, shall be regarded as secret and confidential, and the Contractor's officers and employees shall not reveal their contents to any unauthorized person, firm or corporation, nor shall any unauthorized person, firm or corporation have access to them. All drawings, specifications, documents and other memoranda or writings relating to the work hereunder shall remain or become the property of APCI whether executed by or for the Contractor for APCI, or otherwise by or for the Contractor, or by or for a Subcontractor (previously approved by APCI) operating under the Contractor's supervision or direction, and all such documents and copies thereof shall be returned or transmitted to APCI forthwith upon termination or completion of the work, whichever may first occur. All subcontracts which may be executed by the Contractor (with APCI's written approval) shall provide for, and the Contractor shall obtain thereunder, rigid adherence to terms similar to those contained in this Article. The obligations of the Contractor under the terms and provision of this Article shall continue even though any or all the work under this Contract may have been terminated or completed.
- B. It is agreed that the Contractor shall be obligated to transfer to APCI or its representatives, assigns, designees or successors, the benefits of all inventions, improvements, technical information and data resulting from or connected with the Contractor's work under this Contract and the Contractor agrees to execute or cause to be executed, any assignment or other documents necessary to assure to or vest in APCI or its representatives, assigns, designees or successors, all the benefits of as well as the entire right, title and interest in and to any such inventions, improvements, technical information or data, including the execution of any and all applications for United States or foreign patents as APCI, or any of its representatives, assigns, designees, or successors may request, giving such assistance as is reasonably necessary for obtaining full patent protection for such inventions or improvements in the United States and in any foreign countries, all as directed by APCI or any of its representatives, assigns, designees or successors. It is understood that all costs and expenses of the Contractor previously approved by APCI, in taking any of the steps required by APCI hereunder, shall be reimbursed to the Contractor by APCI.
- C. Any proposed publications, announcements, or other communications regarding performance associated with this Contract, including but not limited to facility capacity, production, scope, schedule, cost, and photographic depictions shall be submitted to Air Products and Chemicals, Inc. for review and written approval prior to publication. Contractor is advised to utilize Air Products Corporate Sourcing Organization as a "single point of contact" for any submissions related to communications. Contractor, Contractor's Subcontractors and Contractors Invitee's shall not take any photos on the Project site without written permission from APCI or the Owner.

**ARTICLE 25. SAFETY AND SECURITY; EXCLUSION OF UNAUTHORIZED PERSONS**

- A. Contractor acknowledges its duty to furnish each of its employees employment, and places of employment, free from recognized hazards and unsafe conditions causing, or likely to cause, death or serious physical or material harm and agrees to comply with all safety and health standards promulgated under the Occupational Safety and Health Act of 1970 as amended. Contractor acknowledges that the sole responsibility for the safety of Contractor's employees, and for compliance with the Occupational Safety and Health Act of 1970 regarding such employees, rests with Contractor. During the performance of the work, Contractor, its employees, Subcontractors, agents and invitees shall strictly comply with all safety, fire, health and other applicable rules and regulations of Owner and APCI. Contractor shall be responsible to familiarize itself and each of its employees, Subcontractors, agents and invitees with such rules and regulations, and in the event any of them violate any such rules and/or regulations, Contractor shall cause such persons to be dismissed permanently from the Project. Owner and APCI reserve the sole right to determine if such act, or failure to act, constitutes a violation or deviation of any such rules and regulations. Contractor expressly agrees to review its Safety and Health Program for the work with APCI prior to beginning performance of the work and during the performance of the work, and to demonstrate to APCI, during the performance of the work, that it is fully complying with all applicable laws, rules and regulations. Contractor agrees to indemnify, defend and hold harmless Owner and APCI from any expense, liability, loss, claim, penalty or fine resulting directly or indirectly from Contractor's failure to comply with the aforementioned safety and health standards. Contractor further understands and agrees that any violation of applicable safety and health laws, rules or regulations shall be sufficient cause for termination by APCI or Owner pursuant to Article 9 Clause A hereof.
- B. The Contractor shall, at its own expense, cooperate with APCI and the Owner in all reasonable safety precautions in connection with the Project, and comply with all requirements of APCI or the Owner, or any governmental authority having an interest in the work, concerning the secrecy of any part or aspect of the work or of the Project, and shall not permit any person to enter upon the premises of APCI or the Owner at the Project site or elsewhere, except in accordance with the safety and security requirements of APCI, the Owner or such governmental authority having an interest in the work

## ARTICLE 26. COMPLIANCE WITH ANTI-CORRUPTION LAWS / CODE OF CONDUCT

- A. Contractor represents, warrants and covenants, on behalf of itself and the Contractor Group (defined below):
- (1) Contractor has read, understands and will comply with all Anti-Corruption Laws. "Anti-Corruption Laws" mean any applicable foreign or domestic anti-bribery and anti-corruption laws, regulations, rules, or orders, as amended from time to time, and shall always include for purposes of this Agreement the U.S. Foreign Corrupt Practices Act ("FCPA") and UK Bribery Act 2010 ("UKBA") as each may be amended irrespective of the location of any performance or nationality or residence of the parties.
  - (2) No employee, officer, director, representative or agent of Contractor, or of any of Contractor's parents, subsidiaries, partners, or affiliates (collectively, the "Contractor Group"), is a "Government Official or Entity". "Government Official or Entity" shall include any governmental, military, political or public international organization or entity, or any department, subdivision, agency, or instrumentality of the same, including any state or government-owned or controlled business or entity, any political party, or any officer, employee or candidate for office of any of the foregoing, or any person acting for or on behalf of any of the foregoing.
  - (3) Contractor Group has not and will not, directly or indirectly, pay, give, promise, or offer (or authorize any of the foregoing) any money, gifts or anything of value to any Governmental Official or Entity or to any other person, or accept or receive any money, gifts, or anything of value, for purposes of: obtaining or retaining business for or with, or directing business to, any person, including, without limitation, Air Products; influencing any official act, decision or omission of any Government Official or Entity; inducing any Government Official or Entity to do or omit to do any act in violation of its lawful duty; or securing any improper advantage.
  - (4) Except as previously disclosed by Contractor to Air Products in writing, (i) there have been no accusations, allegations, claims, investigations, informal inquiries, indictments, prosecutions, charges, or other enforcement actions against the Contractor Group relating to bribery, corruption, money laundering, fraud, obstruction of justice, racketeering, or any other legal or ethical violation, and (ii) Contractor Group has never violated any Anti-Corruption Law or caused any other party to be in violation of any Anti-Corruption Law.
  - (5) Contractor shall promptly notify Air Products in writing in the event that any of the foregoing representations or warranties are not true or are no longer true, or in the event of a breach of any of the foregoing representations, warranties and covenants. Contractor shall reaffirm compliance in writing if requested by Air Products at any time.
- B. Contractor will maintain financial books and records that timely, completely, fairly and accurately reflect in reasonable detail all financial transactions, in accordance with all applicable laws including the Anti-Corruption Laws, and shall maintain such books and records for at least three years after the expiration or termination of this Agreement, and Contractor agrees that Air Products, or its outside auditors, shall be permitted upon request to audit Contractor's books, accounts, records and invoices and accompanying documentation for compliance with any applicable Anti-Corruption Laws. Contractor agrees to cooperate fully in any audit or in connection with any investigation regarding any potential violations of the Anti-Corruption Laws in connection with this Agreement.
- C. Contractor shall ensure that all members of the Contractor Group comply with the covenants in this Section. Contractor additionally agrees that it shall "flow down", for the express benefit of Air Products, all of the provisions in this Section to any contractor or subcontractor of the Contractor performing work in relation to this Agreement. Contractor shall ensure that any such contractor or subcontractor agrees to comply with and be bound by the provisions of this Section, and Contractor shall be liable to Air Products for any violations, breach or non-compliance by any of Contractor's contractors or subcontractors.
- D. Contractor understands and agrees that any misrepresentation, breach, or violation under this Section shall constitute a material breach of the Agreement entitling Air Products to terminate the Agreement and to withhold further performance without prejudice to any other rights or remedies available under this Agreement or at law or in equity. Air Products may also suspend performance or withhold payments if it has a good faith belief that Contractor has violated, intends to violate, or may have violated any Anti-Corruption Laws. CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD AIR PRODUCTS HARMLESS FROM AND AGAINST ANY CLAIMS, COSTS, LOSSES, PENALTIES OR DAMAGES OF ANY KIND, INCLUDING ATTORNEY FEES, ARISING FROM OR RELATING TO ANY MISREPRESENTATION, VIOLATION OR BREACH BY CONTRACTOR OR ANY MEMBER OF THE CONTRACTOR GROUP OR ANY PERSON OR ENTITY ACTING ON THEIR BEHALF OF ANY OF THE PROVISIONS UNDER THIS SECTION.
- E. Contractor agrees to abide by APCI's Code of Conduct in connection with the transactions contemplated by the Purchase Order and in its dealings with APCI. The APCI Code of Conduct is available for review by accessing [www.airproducts.com/codeofconduct](http://www.airproducts.com/codeofconduct).
- F. Contractor shall abide by the Air Products' Human Rights Policy and all applicable national laws and international treaties concerning human rights, labor rights, and human trafficking and slavery. Consistent with the United Nations Universal Declaration of Human Rights and the International Labor Organization's Declaration on Fundamental Principles and Rights at Work, Contractor shall endeavor to prevent, mitigate, and account for the impacts of its activities in connection with the transactions contemplated by the Purchase Order on the human rights of individuals directly or indirectly affected by their supply chains.

APCI reserves the right to conduct a due diligence review to confirm Contractor's compliance with this Section 26F. Contractor shall cooperate with any reasonable due diligence requests of APCI. If APCI is not satisfied that Contractor is in compliance with this Section 26F, APCI reserves the right to suspend or terminate the Purchase Order. APCI does not assume a duty under this Section 26F to monitor Contractor including, without limitation, for compliance with laws or standards regarding working conditions, pay, hours, discrimination, forced labor, or child labor.

## ARTICLE 27. PRECEDENCE; DISCREPANCIES

- A. The terms, provisions, and conditions of the Construction Agreement shall take precedence over those set forth in the General Conditions, Specifications and Drawings, in the event of any inconsistency.
- B. Discrepancies - Anything mentioned in the Specifications and not shown on the Drawings or anything shown on the Drawings and not mentioned in the Specifications, shall be of like effect as if shown and mentioned in both. In cases of difference between Drawings and Specifications, or in any case of discrepancy in the Drawings, or Specifications, the matter shall be immediately submitted to APCI's representative without whose decision such discrepancy shall not be adjusted by Contractor, save only at his own risk and expense. No work shall proceed without proper drawings and specifications.

## ARTICLE 28. ENTIRE AGREEMENT; MODIFICATIONS; NOTICES; GOVERNING LAW

- A. It is expressly agreed that this Contract constitutes the entire and only agreement between the parties hereto, superseding any previous agreements or understandings; that there are no agreements, understandings or covenants between the parties of any kind, nature or description, expressed or implied, oral or otherwise, pertaining to the work hereunder, which have not been set forth herein; and that this Contract cannot be modified, altered, amended, changed or canceled nor any provision hereof waived or abrogated, except by an instrument in writing duly executed and acknowledged on behalf of APCI and APCI's officer or representative who has executed this Contract on behalf of APCI or by the representative duly authorized in writing by such person.
- B. Notices authorized under this Contract shall be sufficient and effective only if in writing and sent by prepaid mail or delivered to the parties at their addresses stated in the Contract Documents to the attention of such persons as have executed this Contract on behalf of the parties or their representatives duly authorized by them in writing.
- C. This Contract, and all disputes between the parties pertaining to the work, shall be governed by the laws of the Commonwealth of Pennsylvania without giving effect to its conflicts of law provisions.

**EXHIBIT A**  
**INSURANCE COVERAGE REQUIREMENTS**

Unless otherwise agreed in writing, the Contractor shall, at its sole expense, maintain in effect at all times during the performance of work, insurance coverages with limits, which may be a combination of primary and excess, not less than those set forth below with insurers and policy forms satisfactory to Air Products and Chemicals, Inc. or its affiliates (hereafter collectively "Air Products"). Air Products makes no representation that the minimum limits or coverage types which it requires are adequate to protect Contractor. If Contractor provides coverage through claims made policies, preapproval is required before bids will be accepted.

1. **Workers' Compensation** As required by any applicable state or federal law or regulation including the United States Longshoremen's and Harbor Workers' Compensation Act, the Jones Act and Admiralty or Maritime Law.
  
2. **Employer's Liability** \$1,000,000 each occurrence, including occupational disease.
  
3. **Commercial General Liability** Combined single limits of liability for bodily injury or property damage, including personal injury and advertising injury:  
  
\$2,000,000 each occurrence  
  
\$2,000,000 Personal and Advertising injury each offense or act or related series of offenses or acts.  
  
The General Aggregate and the Products Completed Operations Aggregate limits shall each be \$4,000,000. Coverages not specified above may be equal or less than each occurrence limit.
  
4. **Automobile Liability, with Contractual Liability Coverage** Combined single limit of liability of \$1,000,000 each occurrence for bodily injury or property damage for all owned, hired, and non-owned automobiles, which term shall include any land motor vehicle, trailer, or semitrailer designed for travel on public roads but excluding mobile equipment.

**Air Products and Chemicals, Inc., its Affiliates, and Employees (hereafter collectively "Air Products") shall be made Additional Insureds (per Additional Insured Endorsement CG 20 38 04 13) on the above policy 3, and shall be given thirty (30) days' notice in the event of cancellation or nonrenewal of any policy.** An Acond form, or Insurance Company or Broker form (Insurance Certificate) evidencing the required coverage shall be submitted prior to commencing work under the Contract. **A waiver of subrogation in favor of Air Products shall be obtained from Contractor's Workers' Compensation and Employer's Liability insurer.** Contractor shall cause its lower-tier contractors at the jobsite to obtain and maintain insurance policies to protect Air Products in accordance with the above requirements.

All insurance provided by Contractor and its lower-tier contractors shall be primary and any similar insurance maintained by Air Products shall be excess thereof and not contributing with Contractor's or its lower-tier contractors' insurance. The insurance required to be maintained by Contractor herein shall not limit any obligation or liability which is the responsibility of Contractor under any related Contract or Agreement.