

**TOLKO INDUSTRIES LTD.**

**GENERAL TERMS & CONDITIONS OF CONTRACT**

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## PART 1 – DEFINITIONS AND INTERPRETATION

### 1. DEFINITIONS

- 1.1 The following words or terms, where used in these Terms and Conditions, shall have the meanings set forth below:
- 1.1.1 "**Acceptance**" means Tolko's agreement that Work has been fully completed in accordance with the Contract, the Contractor has corrected known deficiencies, and the Contractor has furnished to Tolko all of the Goods, information and documents required under the Contract.
  - 1.1.2 "**Affiliate**" means, as applicable, any parent or subsidiary of Tolko or the Contractor, or any parent or subsidiary of any of them, or any parent or subsidiary further on in the chain of ownership, or any partnership wherein all partners are Affiliates within the meaning of this definition.
  - 1.1.3 "**Change**" means a revision to the Work being performed by the Contractor, including a deletion of Work already authorized, or the authorization of additional Work, in each case as approved by Tolko in writing.
  - 1.1.4 "**Change Order**" means a Contract change-authorization document used to effect a Change.
  - 1.1.5 "**Claim**", as used in Article 41, means any indebtedness or other liability of the Contractor or any Subcontractors incurred in relation to performance of Work or this Contract.
  - 1.1.6 "**Commencement Date**" means the date for commencement of Work by the Contractor as specified in the Principal Document.
  - 1.1.7 "**Completion Date**" means the date for total completion of the Work as specified in the Principal Document, as may be amended in accordance with the Contract.
  - 1.1.8 "**Confidential Information**" means all knowledge, information and documentation including, without limitation, specifications, drawings, designs, and computer programs, furnished by or on behalf of Tolko to the Contractor, or prepared by the Contractor for performance of any Work under the Contract, the terms and conditions of this Contract, and all knowledge and information concerning the technical, commercial and business operations of Tolko (whether disclosed in writing, orally, or otherwise).
  - 1.1.9 "**Contract**" means, collectively, these Terms and Conditions, all Change Orders, the Principal Document, those documents listed in the Principal Document, and all exhibits, schedules and appendices attached hereto or thereto and any amendments hereto or thereto, all of which are incorporated and made a part thereof.
  - 1.1.10 "**Contract Price**" means the amount that Tolko shall pay to the Contractor for Work performed and for other obligations assumed by the Contractor pursuant to the Contract, as set out in the Principal Document.
  - 1.1.11 "**Contractor**" means the legal entity as specified in the Principal Document.

- 1.1.12 "**Equipment**" means the equipment and tools, (including rented or leased tools and equipment), and their associated spare parts and consumables, required to perform Work but not forming part of the Work.
- 1.1.13 "**Force Majeure**" means an occurrence beyond the control and without the fault or negligence of the party affected and which said party is unable to prevent or provide against by the exercise of reasonable diligence including, but not limited to: acts of God or the King's enemies, expropriation or confiscation of land and personal property; war; terrorism; riot; rebellion; sabotage; flood; fire; unusually severe weather that could not reasonably have been anticipated; explosion; and any strike or other labour disturbance.
- 1.1.14 "**Goods**" means any items, materials, machinery, equipment, systems, technology, licences, processes, supplies and parts (including any part, component or portion thereof) to be supplied by the Contractor under the Contract for which title and ownership is intended to transfer to Tolko pursuant to the Contract, whether or not such items are integrated into any Work that is affixed to the Work Site.
- 1.1.15 "**Job Specifications**" means the collection of descriptions, documents, drawings, specifications, requirements and other information describing Work the Contractor is to perform under the Contract, set out in the Principal Document or otherwise attached to the Contract, as may be amended from time to time.
- 1.1.16 "**Laws**" means all applicable federal, provincial and local laws, regulations, ordinances, rules, decrees, codes and permits in force during the term of the Contract.
- 1.1.17 "**Liaison Representative**" means the representative designated by each of the Contractor and Tolko, respectively, to act as a liaison between the Contractor and Tolko and to represent the Contractor and Tolko respectively, in all matters covered by the Contract.
- 1.1.18 "**Prime Contractor**" means the role set out in the applicable workers' compensation and occupational health and safety legislation or regulation.
- 1.1.19 "**Principal Document**" means, as applicable, the principal signed contract (including, as applicable, a master agreement and/or purchase order), or the document to which these Terms and Conditions are appended, and includes the Job Specifications, and all exhibits issued, approved, and assigned a numerical reference by Tolko for Work required to be provided or performed by the Contractor, all as may be amended from time to time.
- 1.1.20 "**Safety**" means the performance of Work in a manner that is safe, non-hazardous, in accordance with Laws, in accordance with all facility specific requirements and policies of Tolko, and in a manner that is environmentally acceptable to Tolko.
- 1.1.21 "**Sales Tax**" means the goods and services tax imposed pursuant to the Excise Tax Act (Canada) and any similar value added tax imposed by any province or territory of Canada, including any harmonized sales tax and provincial sales tax, that is applicable to the Work.
- 1.1.22 "**Subcontractor**" means a third party approved by Tolko and having a direct contract with the Contractor to perform a part or parts of the Work.

- 1.1.23 "**Tolko**" means Tolko Industries Ltd. or such other Tolko Affiliate as may be specified in the Principal Document.
- 1.1.24 "**Warranty Period**" means the period of time commencing at Acceptance or termination of the Work and ending one year later.
- 1.1.25 "**Work**" means the carrying out, doing and supplying of all things that are to be done or supplied by the Contractor pursuant to this Contract and the end product of such activities including, without limitation (but only as and to the extent applicable under this Contract):
- (a) the supply, sale and delivery of the Goods;
  - (b) the manufacture, shipping and unloading of the Goods;
  - (c) the performance of all work and supervision, and the provision of all Goods and Equipment necessary for the successful and safe completion, of the Work that is described in the Job Specifications;
  - (d) the engineering and design of all Goods and the Work;
  - (e) the supply of all designs, data and other documentation related to the Work; and/or
  - (f) the performance of all warranty work.
- 1.1.26 "**Work Site**" means any site owned by Tolko described in the Job Specifications where Work is to be performed.

## **2. INTERPRETATION**

- 2.1 These Terms and Conditions are divided into three (3) parts. Part 1 and Part 2 of these Terms and Conditions are included in, and form an integral part of, all Contracts. In addition, Part 3 of these Terms and Conditions is included in, and forms an integral part of, any Contract where any aspect of the Work involves: (i) the performance by the Contractor (or by any of its officers, employees, servants, agents or subcontractors) of any Work at any Work Site; and/or (ii) any consulting, design, engineering or other professional and/or intellectual services. These Terms and Conditions shall be read and interpreted accordingly.

### **PART 2 – TERMS AND CONDITIONS APPLICABLE TO ALL CONTRACTS**

The Terms and Conditions contained in this Part 2 of these Terms and Conditions are included in, and form an integral part of, all Contracts.

## **3. CONTRACTOR COMMITMENTS & REPRESENTATIONS**

- 3.1 The Contractor shall perform or provide the Work for Tolko as described in the Contract. The Contractor represents now and during the term of the Contract that:
- 3.1.1 it is familiar with all conditions, risks, contingencies and other circumstances (including, without limitation, labour relations, and the delivery, transportation and supply of materials) that may affect performance of the Work and has taken them into account in agreeing to the Contract

Price and Completion Date set forth in the Contract; it is, and will keep itself, knowledgeable of and will comply with all Laws and business practices that must be followed or observed in performing the Work;

- 3.1.2 it has adequate finances, personnel and other resources to successfully complete its obligations under the Contract;
- 3.1.3 the Work will be performed in accordance with all professional and industry standards and, where the Work is specified to meet specific industry standards, the Work shall meet the requirements of the latest published edition of those standards, if any, in effect on and after the date the Contract becomes effective unless Tolko has agreed in writing to deviations from those standards;
- 3.1.4 without limiting the generality of the foregoing, where the Contract or Tolko requires any Goods to meet industry standards (including, for example, ASME, ASTM, CSA), the Contractor shall meet the requirements of the latest published edition of those standards in effect on and after the Commencement Date, as such standard may be amended after the date this Contract becomes effective. Where Tolko requires the Contractor to be ISO 9001 certified, the Contractor shall ensure that Tolko has access to documentation to five (5) generations;
- 3.1.5 Unless otherwise specified in the Principal Document, where any part of the Work involves offsite manufacturing by or on behalf of the Contractor, the Contractor shall, with reasonable written notification from Tolko, permit Tolko and/or its representatives or customers access to the Contractor's or any relevant Subcontractor's manufacturing facilities during normal business hours to witness and verify manufacturing processes and inspect any Goods;
- 3.1.6 it is fully qualified and has all required professional qualifications and licenses, business licenses, trade certificates, quality certificates and registrations required to carry out the Work, including the performance of any Work at the Work Site, all of which shall be performed in accordance with all professional and industry standards applicable thereto; and
- 3.1.7 the Contractor will perform the Work with that degree of care, skill and diligence normally provided by a qualified and experienced professional performing work similar to the Work. For such purposes, the Contractor will provide personnel who have the qualifications, experience and capabilities to perform the Work.

#### **4. GENERAL REQUIREMENTS**

- 4.1 The Contractor shall use sound and accepted industry and professional practices to perform all of the Work and shall ensure compliance with Laws.
- 4.2 Except as otherwise expressly specified in the Job Specifications, the Contractor shall provide any Equipment that is necessary in order for the Contractor to complete the Work.

#### **5. SCHEDULE**

- 5.1 The Contractor shall commence Work on the Commencement Date and shall perform the Work diligently, efficiently, and in a manner consistent with the Contract. The Contractor shall meet all

milestone and key dates, if any, specified in the Contract and shall complete the Work by the Completion Date, and the Contractor shall bear all costs to meet such dates.

5.2 For greater certainty, the Completion Date is subject to Change only by Change Order or on account of Force Majeure.

5.3 Should the Contractor fail to complete the Work in accordance with the Contract by the Completion Date, the Contractor shall pay to Tolko the sum, if any, stipulated in the Contract as liquidated damages for each and every calendar day following the day fixed as the Completion Date ending on the day immediately preceding the day that total performance of the Work has been achieved and is Accepted by Tolko.

## **6. DELIVERY AND TITLE**

6.1 Unless otherwise stated in the Principal Document, all Goods to be sold and/or supplied by the Contractor must be delivered Delivery Duty Paid (most recent version of Incoterms) to the Work Site.

6.2 Title to all Work completed or in the course of completion, and to any and all Goods sold and/or supplied by the Contractor, shall pass to Tolko upon payment therefor by Tolko or immediately upon delivery to Tolko in accordance with the Contract, whichever occurs first. Despite the passage of title to any portion of the Work and/or any Goods to Tolko, the Contractor shall remain solely responsible for and shall bear any and all risk of loss or damage to all Work and any Goods until the date of actual delivery thereof to Tolko in accordance with the Contract. Neither the transfer of title nor the transfer of risk of loss with respect to the Goods to Tolko will constitute Acceptance by Tolko.

6.3 The Contractor warrants full and unrestricted title to Tolko for all Work, including any and all Goods sold or supplied by the Contractor, free and clear of any and all liens, restrictions, reservations, security interests and encumbrances whatsoever.

## **7. PACKING AND MARKING**

7.1 All Goods supplied by the Contractor shall be packaged and supported in a manner to ensure safety and protection against damage during shipment. All such Goods are to be sufficiently marked on the outside of the package to avoid the need for opening the package for identification and determination of the Contract reference. All correspondence from the Contractor including, but not limited to, packing slips, express receipts, bills of lading and invoices, regarding the Goods and the Contract, shall include the Contract number on the face thereof. The Contractor shall ensure that the declared value of the Goods is marked on all shipping documents.

## **8. REVIEW AND APPROVAL OF DRAWINGS**

8.1 The Contractor shall submit to Tolko for its prior approval all design and engineering Work, such as drawings and specifications, including any changes thereto, which are a part of the Work, prior to implementation thereof. Unless otherwise set out in the Contract, such Work shall be submitted to, and approved by, Tolko's project manager (as identified in the Contract or otherwise identified in writing by Tolko to the Contractor). Unless the right to approve or disapprove design and engineering Work, including changes thereto, is waived in writing by Tolko on a case-by-case basis, Tolko shall approve or disapprove (and provide comments with respect to) all such design and engineering Work, and changes thereto, submitted by the Contractor prior to the implementation of such design and engineering Work.

The Contractor acknowledges that Tolko relies on the Contractor to ensure that all design and engineering work, including all drawings and specifications, are complete and adequate to enable completion of the Work in accordance with the Contract. APPROVAL BY TOLKO, WHETHER OR NOT ACCOMPANIED BY COMMENT, DOES NOT RELEASE THE CONTRACTOR FROM ANY CONTRACTUAL OBLIGATIONS DUE TO DESIGN OR ENGINEERING ERRORS OR OMISSIONS ON THE CONTRACTOR'S PART. UNLESS WAIVED IN WRITING BY TOLKO IN ITS SOLE DISCRETION, ANY WORK PERFORMED PRIOR TO APPROVAL BY TOLKO SHALL BE AT THE CONTRACTOR'S SOLE RISK AND EXPENSE.

## **9. CHANGES**

- 9.1 Changes to the Work may be made after the date the Contract becomes effective, by Change Order agreed to between Tolko and the Contractor, as described in this Article 9.
- 9.2 Upon Tolko's request for a Change, the Contractor shall prepare an estimate of the total effects of the proposed Change (if any) including, without limitation, to the Completion Date and the Contract Price (which adjustment shall be based on the pricing in the Principal Document). Unless otherwise advised by Tolko, such estimates must be accompanied by itemized breakdowns together with detailed substantiating documentation, and must be in such form as Tolko reasonably requires.
- 9.3 If Tolko and the Contractor agree on all aspects of the Change, they shall execute a written Change Order evidencing the agreed upon Change. The Contractor shall not proceed with the Change until such effects have been agreed to between Tolko and the Contractor and the parties have executed the Change Order. Changes performed without an executed Change Order are at the Contractor's sole risk and expense.
- 9.4 Except as specifically set forth in a Change Order, a Change to the Work does not affect any other warranties, guarantees or obligations of the Contractor. The Contractor's investment in producing any estimates, and any instructions, interpretations, or decisions of Tolko not resulting in any Change Orders, shall not result in a change to the Contract Price or Completion Date.

## **10. COMPENSATION, INVOICING & PAYMENT**

- 10.1 Tolko shall pay the Contractor the Contract Price in the manner described in the Principal Document. Payment of the Contract Price shall not in itself constitute Acceptance.
- 10.2 The Contractor shall submit its invoices at the time(s) and to the invoice address specified in the Principal Document. Unless otherwise specified in the Principal Document, the Contractor shall not submit its invoices until Acceptance of the entirety of the Work by Tolko.
- 10.3 Each invoice shall include such information and documentation reasonably required by Tolko including:
- 10.3.1 where applicable, all information required to satisfy the requirements of a "proper invoice" (or similar term) under applicable Laws;
  - 10.3.2 in the case of the final invoice, a release of claims by the Contractor and each Subcontractor in favour of Tolko; and
  - 10.3.3 such other information as may be reasonably requested by Tolko.
- 10.4 Subject to the provisions of the Contract and applicable Laws, Tolko shall pay the Contractor's invoices within thirty (30) days of receipt at the invoice address. Should Tolko dispute any invoice or require



additional supporting information or documentation, Tolko shall promptly notify the Contractor of the nature of the dispute and of the information or documentation required. In such event, Tolko shall have the right, subject to applicable Laws, to withhold payment of all or part of the invoice in question until thirty (30) days after:

10.4.1 Tolko and the Contractor agree on the amount to be paid; and

10.4.2 if applicable, the additional information or documentation requested by Tolko has been received from the Contractor.

10.5 Where applicable, payment of Contractor's invoices will be subject to compliance with holdback provisions of applicable Laws. Without limiting Tolko's right to maintain a lien holdback in accordance with Laws, the release of the final payment set out in the Contract will not be due and owing until the later of (i) the expiration of any applicable statutory holdback or lien expiration period, (ii) the expiration of the period set forth in the Principal Document, and (iii) 40 days after Tolko's Acceptance of the Work.

10.6 Tolko may withhold, set-off or deduct from any amount otherwise payable to the Contractor under the Contract such amount as may be reasonably necessary to reimburse, indemnify or protect Tolko from any amount owing by the Contractor to Tolko pursuant to the Contract, or for any loss or damage that may be due to the default by the Contractor in any obligation under the Contract, or from claims by third parties against Tolko in respect of the Work.

10.7 If cash discounts are available, the cash discount period will be calculated from the later of the following dates (i) the date that the invoice is received by Tolko, and (ii) the date of Acceptance of the Work by Tolko.

10.8 Except as otherwise expressly provided in the Principal Document, the Contract Price shall be the only compensation payable by Tolko to the Contractor for the complete performance of the Work and the Vendor's compliance with the Contract.

10.9 The Contract Price shall be subject to adjustment only by Change Order.

## **11. TAXES & DUTIES**

11.1 The Contractor shall be solely liable for and shall pay when due all taxes and duties whatsoever imposed by reason of the Work to be performed by the Contractor, except for Sales Tax required by Laws to be collected by the Contractor from Tolko. Sales Tax shall be specifically identified by the Contractor in all invoices under separate line items and, where applicable, items that are non-taxable shall be specifically identified as such. The Contractor shall state its applicable Sales Tax numbers on each invoice.

11.2 Where applicable, Tolko shall supply the Contractor with suitable certification or documentation to authorize the Contractor to obtain all available tax and duty exemptions. Where the Contract Price includes any customs duty required to be paid by the Contractor or Subcontractor on behalf of Tolko, Tolko may take advantage of duty remissions and drawbacks or may require the Contractor, and any Subcontractor through the Contractor, to apply for remissions and drawbacks on behalf of Tolko.

11.3 Notwithstanding any other provision of the Contract, in the event that any amount becomes payable by Tolko or the Contractor as a result of a breach, modification, or termination of the Contract, the amount

payable shall be increased by an amount equal to the applicable Sales Tax percentage rate multiplied by the amount payable and the payer shall pay the increased amount.

## **12. LIABILITY & INDEMNIFICATION**

12.1 Subject to Articles 12.2, and 12.3, the Contractor:

12.1.1 is liable to Tolko for all losses, costs, damages, and expenses that Tolko may suffer, sustain, pay, or incur; and, in addition,

12.1.2 shall indemnify and save Tolko completely harmless from and against all actions, proceedings, claims, demands, losses, debts, costs, damages, and expenses that may be brought against or suffered by Tolko or that it may sustain, pay, or incur,

as a result of one or more breaches of the Contract or as a result of the negligence or willful misconduct of the Contractor and/or Subcontractors, and their respective directors, officers, employees and agents in connection with the performance, purported performance, or non-performance of the Contract, including any Work thereunder.

12.2 The Contractor is liable for and, in addition, shall indemnify and save Tolko completely harmless from and against any loss of or damage to Goods, and any equipment, materials, supplies, and structures supplied by Tolko and intended to be incorporated into the Work caused by any act or omission of the Contractor, its Subcontractors and their personnel.

12.3 The Contractor is liable for and, in addition, shall indemnify and save Tolko completely harmless from, any loss of or damage to the Contractor's or any Subcontractor's property including Equipment, rented items and property of their employees.

12.4 Except to the extent provided in the Contract, neither Tolko nor the Contractor shall be liable for any indirect or consequential damages of the other (including loss of profits or loss of anticipated profits sustained in relation to or arising as a result of the performance, purported performance, or non-performance of the Contract).

12.5 Any protection afforded to the Contractor or Tolko under this Article also applies to the benefit of their respective employees, officers, directors, agents, and Affiliates. It is expressly understood that Tolko and the Contractor are contracting for such purpose as agents for their respective employees, officers, directors, agents, and Affiliates and that Tolko and the Contractor have the power and authority to do so.

## **13. TERMINATION OF WORK**

13.1 Notwithstanding any other provision of the Contract, Tolko may, at any time or times, terminate all or any part of Work for convenience effective immediately upon notice to the Contractor.

13.2 Upon termination for convenience by Tolko, subject to the Contract and provided the Contractor has delivered all Goods, Work, drawings, designs, programs, intellectual property required by the Contract and completed to the date of termination to Tolko and is not otherwise in default under the Contract, the Contractor shall be paid for the value of the Work actually completed up to the effective date of termination calculated with reference to the Contract Price and for reasonable expenses incurred and paid by the Contractor resulting from such termination. Subject to Article 29.7 (to the extent applicable),

payment to the Contractor in accordance with this Article 13.2 shall be the Contractor's sole and exclusive remedy on account of such termination, and will constitute satisfaction of any and all liabilities, damages or obligations of Tolko on account of such termination.

#### **14. DEFICIENT WORK**

14.1 If the Contractor is adjudged bankrupt or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the Contractor, or if the Contractor shall be insolvent, or should the Contractor fail in the performance of any of its obligations under the Contract or fail to prosecute the Work with promptness and diligence, or if any Goods furnished by the Contractor under the Contract are defective or any aspect of performance of Work under the Contract, including but not limited to scheduling and quality, is deficient, Tolko may, in its sole discretion:

14.1.1 terminate the Contract;

14.1.2 suspend or terminate all or any part of the Work;

14.1.3 require the Contractor to promptly remedy any defect or deficiency;

14.1.4 take possession of all Goods, Work, drawings, designs, programs, intellectual property and appliances, including upon the Work Site;

14.1.5 do or pay anything the Contractor has failed to do or pay either by Tolko itself or by employing others for that purpose; or

14.1.6 any two or more of the foregoing.

In any of these cases Tolko may charge all costs, expenses, losses and damages incurred by it including without limitation, all fees (including agency fees and legal fees on a solicitor and his own client basis) to the Contractor who covenants forthwith to reimburse Tolko therefor.

14.2 Costs to remedy deficient or defective Work, engineering, designs, Goods and any additional costs resulting therefrom shall be for the Contractor's account and Tolko may issue a Change Order reducing the Contract Price by the amount of such costs incurred by it or on its behalf.

14.3 The provisions of this Article are in addition to any other rights or remedies Tolko may have at Law, in equity or under the Contract.

#### **15. FORCE MAJEURE**

15.1 Notwithstanding anything herein contained, but subject to Article 15.2, neither party shall be responsible or accountable for total or partial failure to perform any obligations hereunder if such failure shall arise as the result of Force Majeure.

15.2 The following are specifically not excused as Force Majeure events:

15.2.1 late performance by the Contractor or a Subcontractor caused by a shortage of supervisors or labour, inefficiencies, or similar occurrences;

15.2.2 late delivery of Equipment or materials;

15.2.3 lack of finances; or

15.2.4 any lack of or inability to obtain transportation if other options are available.

15.3 Performance of the Work shall be suspended during any period of Force Majeure. The performance of the Work shall be resumed as soon as practicable after the Force Majeure has ceased. Unless otherwise agreed to between the parties, the Completion Date will be extended by the period of time lost due to such Force Majeure.

15.4 If the Contractor is delayed in performance of Work by Force Majeure, the Contractor shall promptly notify Tolko in writing.

15.5 Compensation stipulated in the Principal Document shall not be paid during a period of Force Majeure, and the Contract Price shall not be adjusted on account of a Force Majeure.

15.6 Unless otherwise provided for in the Principal Document, if the time lost to a Force Majeure exceeds or is, in Tolko's reasonable opinion, expected to exceed 30 days in the aggregate, Tolko may, at its option, elect to cancel all or any portion of the Work by giving written notice to the Contractor of such termination. Upon such termination, Tolko shall pay to the Contractor the value of the Work completed and delivered to Tolko in accordance with the Contract having regard to the Contract Price, less any amounts already paid by Tolko to the Contractor in relation to the Work. Tolko shall not have any further liability whatsoever on account of such termination.

15.7 The Contractor shall make reasonable efforts and take mitigating action to minimize the effects of Force Majeure on Tolko, the Work and the Completion Date.

## **16. COMPLIANCE WITH LAW**

16.1 In the performance of the Work, the Contractor shall comply with, and use its best efforts to ensure that its directors, officers, employees, agents and Subcontractors comply with, all legal requirements, including all Laws, and shall notify Tolko in writing promptly upon discovery of any failure to comply with this Article.

16.2 Except as may be otherwise specified in the Principal Document, the Contractor shall, at its own expense, procure all permits, licenses and certificates required by Laws, by virtue of any orders of any authorities having jurisdiction over the execution of any part of the Work, or otherwise in the performance of the Work.

## **17. INTELLECTUAL PROPERTY**

17.1 The Contractor warrants that the performance of the Work or results of such Work, including Tolko's use, maintenance and repair of the Work, shall not infringe upon any Canadian or foreign patent, trademark, copyright, trade secret, industrial design, license agreement, or other intellectual property rights of a similar nature. The Contractor shall indemnify Tolko against all expenses, costs, claims, judgments and decrees resulting from any intellectual property claim, including any infringement, and shall defend Tolko, at the Contractor's expense, against any action brought against Tolko, its agents, employees or Affiliates and based upon such intellectual property claim, infringement or alleged infringement.

- 17.2 Where the Work includes the supply of Goods and/or any other equipment or purchased items, the Contractor grants to Tolko a non-exclusive, royalty-free, irrevocable, perpetual license of patents, copyrights, trade secrets or other rights of a similar nature now or hereafter owned by the Contractor or under which the Contractor has the right to grant licenses that covers any Goods, process, program, software, drawing or composition that is produced in the performance of the Work, incorporated into the Work, or used in connection with Tolko's operation of its facilities or results of the Work.
- 17.3 Tolko shall not be obligated to preserve the secrecy of the Contractor's patents, copyrights, trade secrets or other rights of a similar nature incorporated into the Work or any results of the Work.
- 17.4 Notwithstanding Article 17.2, to the extent that Work consists of research, design, development, engineering, or any other activity the results of which can be protected by patent, copyright, trade secret, trademark, industrial design, or other rights of a similar nature, the Contractor assigns to Tolko all those rights in the results, waives its moral rights in all copyright in the results, and agrees to execute any documentation required by Tolko in connection with such assignment or waiver.

## **18. CONFIDENTIAL INFORMATION**

- 18.1 The Contractor acknowledges that Confidential Information constitutes confidential information of Tolko. The Contractor shall not divulge any Confidential Information or make use of Confidential Information outside of the Contract unless:
- 18.1.1 the Contractor has obtained Tolko's prior written approval to divulge or to use such Confidential Information;
  - 18.1.2 such Confidential Information was lawfully known to the Contractor, without an obligation of confidentiality, prior to its disclosure by Tolko to the Contractor, having become known by the Contractor in a *bona fide* manner;
  - 18.1.3 such Confidential Information is part of the public knowledge or literature; or
  - 18.1.4 such Confidential Information is disclosed to the Contractor by a third party having a *bona fide* right to transmit same without any obligation of confidentiality.
- 18.2 Confidential Information may be disclosed to Subcontractors and any of their employees who have signed written agreements obligating them to at least the same extent as the Contractor is obligated under the Contract.

## **19. CONTROLLED PRODUCTS**

- 19.1 The Contractor shall provide written notice to Tolko as soon as reasonably possible in advance (and in any event at least one (1) week in advance) of delivery of any Goods or other materials that may contain any hazardous materials, controlled products, or designated materials as defined by Laws. A Material Safety Data Sheet must be received by Tolko prior to delivery of any such goods or materials and all of such Goods or other materials must meet all the labeling requirements of the applicable workplace safety and/or health and safety act having jurisdiction in respect of the location in question. Tolko shall have the right to stop Goods and other materials that may contain any hazardous materials, controlled products, or designated materials as defined by Laws, from arriving or being used on any Work Site or at any other site owned by Tolko or any of its Affiliates, in which case Tolko shall not be liable for any costs

or damages whatsoever including loss of anticipated profits. Without limiting the generality of the foregoing, the Contractor shall supply any pertinent toxicity data in its possession relative to human and environmental health effects and offer recommendations for the safe handling and lawful waste disposal of all Goods supplied.

- 19.2 Failure of the Contractor to comply with this condition may result in the termination of the Contract by Tolko in accordance with Article 14, without liability to Tolko, provided that no such termination shall relieve the Contractor from any liability for damage resulting to Tolko as a result of such breach.

## **20. WARRANTIES & GUARANTEES**

- 20.1 The Contractor warrants and guarantees that:

20.1.1 all Work furnished by it and by all Subcontractors shall comply with the requirements of the Contract including the Job Specifications;

20.1.2 the Work will be free from defects and failures for the Warranty Period;

20.1.3 to the extent that the Work includes the sale and supply of Goods, all Goods supplied will be: (i) new; (ii) of good industry standard material and workmanship; (iii) fit and suited for the purpose or use contemplated by Tolko; and (iv) of mercantile quality.

- 20.2 The Contractor shall, after receipt of notice from Tolko, promptly repair or replace, at Tolko's option, any Work that does not meet the warranties and guarantees set out in Article 20.1 to Tolko's satisfaction. The aforesaid repairs or replacement shall be accomplished at no additional cost to Tolko and, without limitation, the Contractor shall bear all removal, transportation and reinstallation charges.

- 20.3 Without limiting the generality of Article 20.2, should any failure in the Works or third party work occur due to the Contractor's or any Subcontractor's defective engineering or design Work, then the Contractor shall, at its sole cost and expense, remedy and correct such failure. The obligation to remedy and correct such failure shall include the provision of corrected design drawings and specifications and the repair, replacement and reconstruction of the deficient or defective Works and third party works in accordance with the corrected design drawings and specifications.

- 20.4 Tolko must give written notice of any warranty claim within thirty (30) days of the expiration of the Warranty Period in order for the warranty claim to be valid.

- 20.5 In the event the Contractor fails or refuses to remedy and correct defects and deficiencies within thirty (30) days of notice by Tolko, or such other reasonable period of time as may be agreed to between the parties, Tolko may correct the same at the Contractor's sole cost and expense.

- 20.6 If, pursuant to the above warranty and guarantee, the Contractor repairs or replaces any Work, the Warranty Period that applies to the repaired or replaced Work shall be extended for a period of twelve(12) months from the date the repairs or replacements were completed.

- 20.7 The Contractor shall notify Tolko, and shall obtain Tolko's prior written consent prior to providing any Work that is not warranted and guaranteed by the Contractor as set out in this Article 20. If Tolko consents to the provision of such Work, the Contractor shall obtain, for the benefit of Tolko, favorable warranties and guarantees acceptable to Tolko from its Subcontractors, consultants, service providers (including technology providers), suppliers, vendors, and manufacturers of such Work. The Contractor

will ensure that such persons furnish a warranty and guarantee against defects and deficiencies in such Work for a time period that is equal to the Warranty Period. If warranties and guarantees of the type and duration described above cannot be obtained except at additional cost, the Contractor shall first obtain and then follow Tolko's written instructions.

20.8 The warranties and guarantees contained in this Article are supplementary to and not in substitution of any other rights which Tolko may have under the Contract or at Law, or otherwise.

## **21. POST WARRANTY & NON-WARRANTY SERVICES**

21.1 Tolko and the Contractor acknowledge that the Work may require ongoing maintenance and repair services that are not covered by warranty or are after the expiry of any applicable warranty period as set out in the Contract. Subject to any specific warranty or post-warranty service terms in the Contract, and without limiting any other rights or remedies Tolko may have under the Contract, it is agreed that Tolko may request from the Contractor, and the Contractor may provide to Tolko, maintenance and repair services with respect to the Work that are not covered by warranty. The services required, and the costs associated therewith, will be negotiated by Tolko and the Contractor at the time of Tolko's request for such non-warranty services. For greater certainty, the Contractor is not obligated to provide non-warranty services unless acceptable terms are agreed to in writing with Tolko and Tolko is not obligated to exclusively receive non-warranty services from the Contractor and may, in its sole discretion, seek third- party service providers where available. This term will continue for the life of the Work or until it is otherwise terminated by the parties in writing.

## **22. PUBLICITY**

22.1 The Contractor shall not use Tolko's name in advertising or promotional material or publicity releases relating to the Work or relating to the results thereof without the prior written approval of Tolko, and the Contractor shall obtain the same covenant from all Subcontractors for the benefit of Tolko.

## **23. REPRESENTATIVES**

23.1 Matters pertaining to the administration of the Contract shall be dealt with through Tolko's Liaison Representative and the Contractor's Liaison Representative. Either party may change its Liaison Representative by notice to the other party.

## **24. ASSIGNMENT**

24.1 The Contractor shall not assign any of its rights under this Contract in whole or in part without the prior written approval of Tolko, which may be withheld for any reason.

## **25. GENERAL**

25.1 The Contract, constitutes the exclusive and entire agreement between Tolko and the Contractor and supersedes all prior negotiations, representations, or agreements relating thereto, written or oral, including Tolko's proposal invitation (if any) and the Contractor's proposal (if any) except to the extent they are expressly incorporated herein. Tolko hereby gives notice that it expressly rejects any terms or conditions contained in any document which has been, or may in the future be, supplied to it by the Contractor which are inconsistent with, or attempt to vary, any of these Terms and Conditions, whether such terms or conditions are set forth in the Contractor's bid, proposal, order acknowledgement, invoice,

or otherwise disclosed to Tolko. Tolko's acceptance of the Work or any part thereof will not be construed as an acceptance of any terms or conditions contained in any document provided by the Contractor. As such, the Contract constitutes the entire agreement between the parties with respect to the Work. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in the Contract.

- 25.2 Changes, alterations, or modifications to the Contract shall not be effective unless in writing and signed by the parties hereto.
- 25.3 Where Tolko's authorizations or approvals are required, these shall be in writing and shall not relieve the Contractor from its obligations and responsibilities under the Contract.
- 25.4 The Contract shall enure to the benefit of and be binding upon Tolko, the Contractor and the respective successors and permitted assigns of the parties hereto.
- 25.5 The headings and index are for convenience only and shall not be considered in the interpretation of the Contract.
- 25.6 In the event of a conflict between the provisions of this Contract, the order of priority, from highest to lowest, for the purpose of resolving the conflict, shall be as follows:
  - 25.6.1 Change Orders;
  - 25.6.2 the purchase order forming part of the Principal Document, if applicable;
  - 25.6.3 the master agreement or other signed contract forming part of the Principal Document, if applicable;
  - 25.6.4 these Terms and Conditions;
  - 25.6.5 the Job Specifications;
  - 25.6.6 any documents provided by the Contractor and expressly included by reference in the Principal Document as part of the Contract, including the Contractor's proposal, if any; and
  - 25.6.7 any other document expressly included by reference in the Principal Document as part of the Contract.

Further provided that later dated documents shall govern over earlier documents of the same type.

- 25.7 The Contractor is an independent contractor and nothing in this Contract shall constitute the Contractor as an agent, partner or employee of Tolko for any purpose. The Contractor shall not have the authority to make statements, representations, or commitments of any kind or take any other actions that would be binding on Tolko.
- 25.8 The duties and obligations imposed in the Contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available at Law.



- 25.9 No action or failure to act by Tolko shall constitute a waiver of any right or duty afforded to Tolko under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.
- 25.10 Each provision of the Contract is intended to be severable. If any provision hereof is illegal or invalid, such illegality or invalidity shall not affect the validity of the remainder of the Contract.
- 25.11 Except as otherwise expressly provided in the Contract, any rights and remedies specified in the Contract are cumulative and are in addition to any other rights and remedies available at Law or in equity.
- 25.12 Time shall be of the essence of the Contract.

## **26. CHANGE OF CONTROL**

- 26.1 The Contractor shall notify Tolko within 30 days after any of the following changes: (a) change in ownership of the Contractor that is equal to or greater than 50% of the Contractor's issued shares or other securities;
- 26.2 substantial sale of assets of the Contractor, representing greater than 50% of the Contractor's assets;
- 26.3 changes to the Contractor's board of directors equal to or greater than 50% of the members thereof; or
- 26.4 changes to key personnel identified at time of issuance of the Principal Document. In the event of any of the foregoing, or should the Contractor fail to notify Tolko of any of the foregoing, Tolko may terminate the Contract immediately and without penalty in accordance with Article 14.

## **27. GOVERNING LAW**

- 27.1 Trade terms shall, if applicable, be interpreted in accordance with the ICC's Incoterms, latest version. The Laws of the Province in which the office of Tolko issuing the Principal Document is located (but excluding such Province's conflict of laws rules and the United Nations Convention on Contracts for the International Sale of Goods) will apply to and govern the interpretation, validity and enforceability of the Contract. Each of Tolko and the Contractor hereby attorns to the jurisdiction of the courts of such Province.

## **28. NOTICES**

- 28.1 All notices or other written communications required or permitted to be given under the Contract shall be in writing and delivered by hand, prepaid registered mail, or sent by email to Tolko's address or the Contractor's address, as applicable, as shown on the Principal Document.
- 28.2 Any such notice shall be deemed to have been given and received:
- 28.2.1 if delivered, on the first business day following the date on which it was delivered;
- 28.2.2 if mailed, on the fifth business day following the day it was posted; or
- 28.2.3 if given by email, on the first business day following the day it was dispatched subject to confirmation of receipt being provided.

- 28.3 No party shall mail any notice during any period when postal workers are on strike or if a strike is imminent.
- 28.4 Either party may change its address as shown on the Principal Document by giving notice of the change to the other party in accordance with this Article 28.

### **PART 3 – ADDITIONAL TERMS AND CONDITIONS FOR ON-SITE SERVICES**

The Terms and Conditions contained in this Part 3 of these Terms and Conditions are included in, and form an integral part of (to the extent applicable), any Contract where any aspect of the Work involves: (i) the performance by the Contractor (or by any of its officers, employees, servants, agents or subcontractors) of any Work at any Work Site; and/or (ii) any consulting, design, engineering or other professional and/or intellectual services.

#### **29. ADDITIONAL CONTRACTOR REPRESENTATIONS AND REQUIREMENTS**

- 29.1 In addition to the other representations contained here, the Contractor also represents now and during the term of the Contract that it is familiar with all conditions, risks, contingencies and other circumstances (including, without limitation, labour relations, and the delivery, transportation and supply of materials) that may affect performance of the Work and has taken them into account in agreeing to the Contract Price and Completion Date set forth in the Contract; it is, and will keep itself, knowledgeable of and will comply with all Laws and business practices that must be followed or observed in performing the Work.
- 29.2 The Contractor shall obtain prior written approval from Tolko for any overtime Work. If the Contractor neglects or fails to obtain prior written approval from Tolko for overtime Work, the Contractor shall forfeit all right to payment for such Work which the Contractor otherwise might have had, and the Contractor shall not make any claim in respect thereof and, if made, Tolko may reject the same as invalid, and the Contractor shall not have any right of recovery in respect thereof, at Law or otherwise.
- 29.3 The Contractor shall, on a schedule determined by the parties or as requested by Tolko, furnish written reports as to the progress of the Work containing a description of milestones met, key dates, any significant delays encountered, any material deviation from the Job Specifications and a narrative of activities completed since the later of the Commencement Date or the last report. If, due to the fault of the Contractor, the actual progress of the Work is behind schedule or is likely to become behind schedule, based on a critical path methodology, the Contractor shall take appropriate steps, at the Contractor's own expense, to cause the actual progress of the Work to conform to the schedule such that the Completion Date shall be achieved. The Contractor shall produce and present to Tolko for its review and approval, a recovery plan demonstrating how the Contractor will achieve the recovery of the schedule. Tolko shall be entitled to withhold any payment otherwise due to the Contractor until the Contractor submits to Tolko a recovery plan that is acceptable to Tolko.
- 29.4 The Contractor shall ensure that all personnel designated as key personnel in accordance with Article 39 shall be available to devote sufficient time and effort to completion of all Work in accordance with the Contract.
- 29.5 The Contractor shall furnish Tolko with, as applicable and as requested by Tolko, all field notes, design calculations, sketches, and drawings (including as built drawings) related to the performance and completion of the Work, and, where applicable for the proper performance of the Work, such

documentation shall, without cost to Tolko, be reviewed, approved and sealed by a professional engineer registered as a professional engineer in good standing in the jurisdiction(s) in which the Work is delivered.

29.6 The Contractor shall be responsible for construction means, methods, techniques, sequences and procedures.

29.7 Tolko, with respect to Work that has been terminated in accordance with this Agreement, may, by notice to the Contractor, take possession of and use Equipment at the Work Site if, in Tolko's reasonable judgment, it is critical to complete the Work or any part thereof. Tolko shall pay the Contractor a sum reasonably determined by the parties for Tolko's possession and use of any Equipment in accordance with this Article 29.7.

### **30. ADDITIONAL INVOICE MATTERS**

30.1 In addition to the requirements contained in Part 1, each invoice shall also include:

30.1.1 where and to the extent applicable and/or required under the Contract, copies of timesheets, receipts and such other information as Tolko may require to substantiate invoice amounts;

30.1.2 where and to the extent applicable and/or required under the Contract, all appropriate clearance certificates confirming payment of all applicable workers' compensation payments, employment insurance premiums, income tax applicable Sales Tax, and other applicable statutory deductions; and

30.1.3 where and to the extent applicable and/or required under the Contract, confirmation, in a form reasonably required by Tolko, that all outstanding bills in respect of the Work and all Subcontractors and workers engaged in the Work have been paid and that neither the Work Site nor the Work are subject to a charge or lien in favour of any person or entity performing Work and that no person or entity has filed, or is entitled to file, a lien for unpaid wages, materials supplied or services performed in relation to the Work, other than as disclosed and agreed to by Tolko.

### **31. SUBCONTRACTS**

31.1 The Contractor shall not subcontract any part of the Work, or change any Subcontractors or the portion of the Work to be performed by approved Subcontractors, without Tolko's prior written approval.

31.2 The Contractor may subcontract the specific portions of the Work to the specific Subcontractors as set out in a schedule the Principal Document, if any, and other specified portions of Work to other specified Subcontractors as may be approved by Tolko in writing following execution of the Contract.

31.3 Tolko shall have the right, but not the obligation to:

31.3.1 review all procurement documents before issuance thereof to Subcontractors;

31.3.2 review all subcontract bids before any subcontract award is made;

31.3.3 reject the Contractor's choice of any Subcontractor; and

31.3.4 approve before signature all subcontract documents whether of a fixed price, reimbursable, or unit- price nature, or variations thereof.

31.4 Tolko shall have the right to review, at any time after execution by the Contractor and Subcontractor, all subcontract documents related to any portion of the Work.

31.5 Notwithstanding any other provision herein, the Contractor is fully responsible to Tolko for the acts and omissions of its Subcontractors and of persons directly or indirectly employed by such Subcontractor's to perform any Work. No subcontract by the Contractor, nor the granting of any approval or consent to subcontract by Tolko, relieves the Contractor or any of its liabilities or obligations under the Contract.

31.6 The Contractor shall include a clause in all subcontracts giving each of Tolko and the Contractor the right to audit Subcontractors in accordance with Article 42.

31.7 When placing orders for Goods or Equipment through an approved Subcontractor, the Contractor shall order only those Goods and Equipment that are required to perform the Work.

31.8 The Contractor's Affiliates shall be deemed not to be Subcontractors.

## **32. SAFETY AND COMPLIANCE WITH LAWS**

32.1 The Contractor shall be responsible and accountable for Safety related to all aspects of Work. Without limiting the generality of the foregoing, the Contractor shall comply with all health, fire, and other relevant Safety regulations, work practices, and procedures prescribed by Laws and by Tolko from time to time and shall ensure that its employees and those of its Subcontractors are notified of, understand, and abide by said regulations, practices, and procedures at all times and have completed Tolko's safety orientation program as required by Tolko. If the Contractor fails to remedy any breach or to comply with any directive immediately after receipt of written notice, Tolko may, in addition to any other remedies provided in the Contract, enter upon the Work Site and effect such measures as may be necessary to secure compliance and Tolko shall have the right to deduct from any payment due to the Contractor an amount sufficient to indemnify Tolko against the cost of securing such compliance.

32.2 The Contractor shall promptly report all accidents, environmental incidents, injuries, and Safety incidents to government authorities, as required by Laws, and to Tolko on forms to be deemed acceptable or supplied by Tolko and as directed by Tolko.

32.3 Tolko may inspect, at reasonable times the Work Site and appropriate records regarding procedures and performance statistics to ascertain the Contractor's and Subcontractors' compliance with Safety requirements of the Contract. However, neither the existence nor exercise of such right shall relieve the Contractor of its responsibility for monitoring its own and all Subcontractors' compliance with Safety requirements of the Contract and for fulfilling other obligations hereunder with respect to Safety.

32.4 Unless otherwise agreed in the Contract, the Contractor shall provide, at no cost to Tolko, all required personal protective equipment (PPE) and other Equipment required for the safe performance of Work.

32.5 The Contractor shall also ensure that when working at any Tolko facility, all of its employees, officers, directors and agents (and the employees, officers, directors and agents of its Subcontractors) shall only smoke, vape or otherwise use tobacco products within designated smoking areas and in compliance with Tolko's policies and procedures.

- 32.6 The Contractor will have complete control and responsibility for the safety and health of its officers, employees, servants, agents and Subcontractors while engaged in the provision of any Work at the Work Site or at any other site owned by Tolko or any of its Affiliates, and will take all necessary precautions to prevent the occurrence of any injury to person or damage to property during the performance of such Work.
- 32.7 For greater certainty, the Contractor shall inform itself of, meet and strictly comply with (and ensure that its officers, employees, servants, agents and Subcontractors inform themselves of, meet and strictly comply with) all applicable rules, regulations and requirements of workers' compensation and occupational health & safety legislation, and with all applicable rules, regulations, standards, policies and requirements of Tolko including, without limitation, Tolko's Environmental Policies and Procedures, any Emergency Response Procedure, and any Work Site specific policies or procedures.
- 32.8 Tolko is designated as the Prime Contractor with respect to the Work Site. For greater certainty, Tolko shall assume and carry out all duties and responsibilities of a Prime Contractor on the Work Site which are set out under the applicable Laws, including under the applicable workers' compensation and occupational health and safety legislation.
- 32.9 The Contractor shall make itself aware of all hazardous materials, controlled products, or designated materials, as defined by Laws, the presence of which at any Work Site may affect the operations there at.

### **33. INSPECTION**

33.1 Tolko or its representatives shall at all times have the right to:

33.1.1 access and inspect any Work and/or Equipment;

33.1.2 observe tests and review proofs or drafts related to any Work and Equipment; and

33.1.3 examine at the Work Site any of the inspection records related to any Work and Equipment.

33.2 If rejected, all Work will be held for disposal at the Contractor's risk and expense. No payment, inspection or acceptance will relieve the Contractor from full responsibility for furnishing Work conforming to the requirements of the Contract.

33.3 For greater certainty, all of the foregoing shall be permitted by, and shall be deemed to be without interference to, the Contractor or any Subcontractors or agents. The Contractor shall provide for said access.

33.4 If the Contract, Tolko's instructions, legal requirements, or any public authority require any part of the Work to be inspected, tested, or approved, the Contractor shall:

33.4.1 ensure that these activities are carried out;

33.4.2 give Tolko timely notice of its readiness for inspection; and

33.4.3 if the inspection is by an authority other than Tolko, advise Tolko in a timely manner of the date fixed for such inspection.

- 33.5 In the event that the Contractor does not notify Tolko as to an inspection required pursuant to Article 33.4, the cost of any disassembling and reassembling of Work to effect such inspection, together with any other costs of the Contractor in arranging for the inspection, shall be for the Contractor's account.
- 33.6 In the event that Tolko wishes to inspect any part of Work that has already been completed and such inspection is not one contemplated under Article 33.4, the cost of any disassembling and reassembling and any incremental costs of the Contractor flowing directly therefrom shall:
- 33.6.1 be borne by Tolko if that part of the Work being inspected complies with the terms of the Contract; or
- 33.6.2 be borne by the Contractor if that part of the Work being inspected does not comply with the terms of the Contract.

#### **34. ALCOHOL AND DRUG POLICY**

- 34.1 The Contractor shall either:
- 34.1.1 maintain a policy governing workplace impairment, alcohol and drugs that meets or exceeds the standards and requirements established in Tolko's alcohol & drug policy; or
- 34.1.2 adopt and implement Tolko's alcohol and drug policy which will be applicable to any employees, subcontractors and other personnel of the Contractor on a Work Site or performing Work for Tolko.
- 34.2 The Contractor will diligently implement the terms of its alcohol and drug policy, including ensuring appropriate notification and training for its own employees, subcontractors and other personnel, and will comply and ensure compliance by its own employees, subcontractors and other personnel with any direction from Tolko regarding implementation of the Contractor's alcohol and drug policy for Contractor employees, subcontractors and other personnel on a Work Site or performing Work for Tolko. Without limiting the foregoing, the Contractor will ensure that its employees, subcontractors and other personnel provide any consent necessary to facilitate any steps taken by Tolko to investigate or implement any portion of the Contractor's alcohol and drug policy.
- 34.3 Tolko may, in its sole discretion or upon request by the Contractor, implement any of the requirements of the Contractor's alcohol and drug policy on the Contractor's behalf, including requiring testing be conducted on the Contractor's employees, subcontractors and other personnel in accordance with the applicable policy.
- 34.4 Upon request by Tolko, the Contractor shall immediately provide Tolko with a copy of the alcohol and drug policy applicable to its employees, subcontractors and other personnel as well as proof of notification and training provided by the Contractor to its employees, subcontractors and other personnel in connection with that policy.
- 34.5 Without limiting any other right or remedy hereunder, Tolko may remove, or require the Contractor to remove, any employee, subcontractor or other personnel of the Contractor from any Tolko Work Site for failure to comply with the requirements of the applicable alcohol and drug policy.

### **35. ON SITE FUEL STORAGE TANKS**

- 35.1 The Contractor shall not bring on, or cause to be brought on, to any Work Site any fuel tanks with a capacity in excess of 1000 gallons (4546 liters) (or any lesser capacity if required to comply with registration or other requirements of all applicable authorities having jurisdiction) without registration of the tank with all applicable authorities having jurisdiction and Tolko's prior written consent. A copy of the registration documents must be forwarded to Tolko prior to any tanks arriving on site.
- 35.2 Tolko's consent shall only be given to tanks which are registered with all applicable authorities having jurisdiction.
- 35.3 Any stationary tank(s) so approved must be either "self-contained" and or have a temporary dike constructed around each tank, at the expense of the Contractor.
- 35.4 All tanks of 235 liters or greater must meet fire codes of all applicable authorities having jurisdiction including, as required, containment and collision protection.
- 35.5 Mobile tanks must be placed at least 150 metres from waterways or ditches.

### **36. SUSPENSION OF WORK**

- 36.1 Tolko may suspend, at any time and for any reason whatsoever, any part of Work, including all remaining Work to be performed or supplied, by giving notice to the Contractor specifying the part of Work to be suspended and the effective date of suspension. The Contractor shall cease the suspended part of the Work on the effective date of suspension but shall continue to perform any part of the Work that is not suspended.
- 36.2 The Contractor shall resume any or all of the suspended Work on the date or dates fixed in Tolko's notice(s) to the Contractor. Except where suspension is pursuant to Article 15, Tolko shall be liable for and shall, subject to the Contract, reimburse the Contractor for reasonable expenses incurred and paid by the Contractor resulting from the suspension. Tolko shall not be liable for any other costs or damages whatsoever including loss of profits or anticipated profits.
- 36.3 If Tolko does not give the Contractor notice to resume Work within thirty (30) days after the date of suspension, the Contractor, by written notice, may terminate the suspended part of Work. Tolko shall not be liable for any other costs or damages whatsoever including loss of profits or anticipated profits.

### **37. INSURANCE**

- 37.1 Without in any way limiting the liability of the Contractor under the Contract, the Contractor shall carry and maintain in force during term of the Contract the following insurance:
- 37.1.1 the Contractor shall maintain workers' compensation coverage, to the full extent required in the jurisdiction where the Work Site is located and wherever the employment contracts of the Contractor's personnel are expressed to be made. Where workers' compensation coverage is not available to Contractor or to anyone employed by or through the Contractor, then the Contractor shall provide employer's liability insurance with limits not less than CAD \$3,000,000 per employee for each accidental injury to or death of any employee of the Contractor and everyone employed by or through the Contractor engaged in the Work.

- 37.1.2 if the performance of the Work or any portion thereof requires the use of any automotive equipment by the Contractor at the Work Site, automobile liability insurance covering owned, non- owned, and rented automotive equipment used in connection with Work and providing at least \$3,000,000 coverage for injury, death, or property damage resulting from each accident;
- 37.1.3 commercial general liability insurance covering the legal liability of the Contractor with limits as contained in such insurance or \$5,000,000, whichever is greater, for injury, death, or property damage resulting from each occurrence. The Contractor represents and warrants that the above insurance shall cover loss of or damage to Tolko's existing property for which the Contractor is responsible pursuant to Article 12.2;
- 37.1.4 if the performance of Work or any portion thereof requires the use of aircraft, aircraft liability insurance covering owned, non-owned, and hired aircraft used in connection with Work and providing limits of at least \$3,000,000 for each passenger seat on each aircraft used in connection with Work and in any case not less than \$10,000,000 total coverage for injury, death, property damage, and passenger liability resulting from each occurrence;
- 37.1.5 if the performance of Work or any portion thereof involves any on-site construction Work (including at the Work Site), the Contractor and all Subcontractors engaged in the performance of such Work shall each carry errors and omissions insurance having limits of not less than \$2,000,000 per claim and with an aggregate limit of not less than \$5,000,000. The Contractor will be responsible for the deductible amount. The policy shall be maintained continuously from the commencement of the Work until 2 years after completion of the Work; and
- 37.1.6 if the performance of Work or any portion thereof involves any consulting, design, engineering or other professional and/or intellectual services, the Contractor and all Subcontractors engaged in the performance of such Work shall each carry and maintain in force errors and omissions insurance having limits of not less than \$2,000,000 per claim and with an aggregate limit of not less than \$5,000,000. The Contractor will be responsible for the deductible amount. The policy shall be maintained continuously from the commencement of the Work until 2 years after completion of the Work.
- 37.2 Before the Commencement Date, the Contractor shall deposit with Tolko, at Tolko's office from which the Contract is let, insurance certificates specifying the types and amounts of coverage in effect, the expiration dates of each policy, and a statement that no insurance will be canceled or materially changed while Work is in progress without thirty (30) calendar days' prior written notice to Tolko. Evidence of renewal of such insurance shall be provided to Tolko prior to the expiration dates of the policies. If requested by Tolko, the Contractor shall furnish Tolko with copies, certified by the insurers, of such insurance policies. If the Contractor neglects or refuses to provide any insurance required herein, or if any insurance is cancelled, Tolko may procure such insurance and issue a Change Order reducing the Contract Price by the amount of the insurance premium paid by Tolko.
- 37.3 The Contractor shall require all Subcontractors to maintain insurance coverage equivalent to that required in Article 37.1. If requested by Tolko, the Contractor shall have Subcontractors furnish the same evidence of insurance required of the Contractor in Article 37.2, and Tolko shall have rights in respect of the Subcontractors similar to those granted to Tolko in Article 37.2.
- 37.4 Each policy of insurance referred to in Articles 37.1 and 37.3 shall be with insurers and upon terms acceptable to Tolko and shall comply with all reasonable requirements of Tolko.



- 37.5 Except as otherwise accepted by Tolko in writing, each policy of insurance referred to this Article 37 shall be endorsed to with Tolko Industries Ltd. named as an Additional Insured.
- 37.6 Any insurance, other than automobile liability insurance, carried by the Contractor or Subcontractors shall contain a provision in which the insurer waives any right it may have or be assigned through subrogation to take any action against Tolko and its Affiliates, or any of their employees, directors, officers, or agents and all other contractors engaged in the Work.

### **38. WORKERS' COMPENSATION**

- 38.1 The Contractor shall maintain an account and require all Subcontractors to maintain an account as an employer and shall at all times pay or cause to be paid any assessment or contribution required to be paid pursuant to workers' compensation legislation in each province and territory in which the Work is performed including personal coverage for employers, partners, proprietors, and directors of the Contractor. If the Contractor fails to do so, Tolko may, in addition to any other rights available under the Contract or at Law, remit the amount of any assessment or contribution directly to the appropriate governmental authority and deduct the same from any payment due or to become due to the Contractor.
- 38.2 Before commencement of any Work at a Work Site, the Contractor shall deliver to Tolko, at Tolko's office to which notices are to be given pursuant to the Contract, certificates from the Workers Compensation Board of the relevant province or territory (or provide such other form of evidence as may be acceptable to Tolko) confirming that the Contractor and all Subcontractors are registered as employers in accordance with Article 38.1 above.

### **39. PERSONNEL & APPROVALS**

- 39.1 The Contractor's key personnel shall be as named in the Contract or as may be approved by Tolko and shall not be changed except with prior written approval of Tolko, which approval shall not be unreasonably withheld.
- 39.2 The Contractor shall maintain a daily list of all Subcontractors and the Contractor's and each Subcontractor's employees performing Work. The Contractor shall, upon request of Tolko, furnish Tolko with the daily lists, together with the names and addresses of all those who have performed or will perform Work.
- 39.3 Should any employees of the Contractor or a Subcontractor act in a manner that, in the opinion of Tolko, is not in Tolko's best interests, Tolko may require the Contractor to remove those employees from performance of Work and to replace them with employees satisfactory to Tolko, at no additional cost to Tolko.
- 39.4 Tolko's Liaison Representative or designate shall be the primary authority for Tolko's approvals required by the Contract and shall be responsible for communications on behalf of Tolko. The Contractor's Liaison Representative or designate shall be the primary authority for the Contractor's approvals required by the Contract and shall be responsible for communications on behalf of the Contractor.
- 39.5 Tolko's Liaison Representative or designate shall have full privileges of inspection of any Work for the purpose of determining whether such Work is performed in accordance with the terms and conditions of the Contract.

#### **40. SECURITY**

40.1 Tolko or Tolko's representatives shall have the right to inspect any material, equipment, or other property, including personal property, when brought into or taken from the Work Site or at any other site owned by Tolko or any of its Affiliates.

#### **41. NON-LIEN CLAIMS & LIEN CLAIMS**

41.1 The Contractor acknowledges that nonpayment of Claims is detrimental to Tolko. The Contractor shall promptly pay or ensure payment of all Claims. If Tolko receives notice or other evidence of a Claim, Tolko may deduct out of any amounts due to the Contractor an amount sufficient to satisfy the Claim. Tolko shall hold the deducted amount until:

41.1.1 the Contractor pays the Claim, in which case Tolko shall pay the deducted amount to the Contractor;

41.1.2 Tolko pays the Claim directly, in which case Tolko shall deduct the same from any payment due or to become due to the Contractor; or

41.1.3 Tolko is satisfied the Claim is invalid, in which case Tolko shall pay the deducted amount to the Contractor.

41.2 In addition to and without limiting the rights conferred in respect of the foregoing, if a lien or charge attaches to any Work, the Work Site, or any of Tolko's property or any interest therein by virtue of any Work, as the result of any act or omission of the Contractor or any Subcontractor, the Contractor shall promptly procure its release. Tolko may secure a discharge of the lien or charge and may deduct the amount paid, including legal fees (on a solicitor and his own client basis) and reasonable costs, from the Contract Price.

41.3 If the amount required to pay any Claim or to secure discharge of a lien or charge exceeds amounts due to the Contractor under the Contract, the Contractor shall forthwith pay the difference to Tolko.

#### **42. AUDIT RIGHTS & ACCESS**

42.1 The Contractor shall keep and shall cause all Subcontractors to keep, in accordance with generally accepted accounting practices, books, records, and accounts pertaining to performance of Work, including the Contractor's and Subcontractors' personnel records, correspondence, instructions, plans, drawings, receipts, vouchers, memoranda, data stored in computer libraries, and any other documentation and related systems and controls necessary for an accurate audit and verification of costs of Work. The Contractor shall preserve and shall cause all Subcontractors to preserve said documents for a period of two (2) years after termination of Work or Acceptance for the purposes of:

42.1.1 ensuring the Contractor's compliance with all the Contract terms;

42.1.2 verifying any reimbursable costs, any changes to rates or to the Contract Price due to Changes, or any suspension or termination of Work; or

42.1.3 examining matters relating to Article 16.

- 42.2 The Contractor shall permit and cause all Subcontractors to permit, at reasonable times during performance of the Work and for a period of two (2) years after termination of Work or Acceptance, authorized representatives of Tolko to interview the Contractor's and Subcontractors' personnel, to review the Contractor's and Subcontractors' accounting and cost-control systems and to inspect books, records, and accounts, including computer files and other documents and to make copies thereof, including extracts from computer files, as necessary to complete the audit.
- 42.3 If an audit indicates errors in the Contractor's invoices or any Subcontractor's charges, the Contractor shall make appropriate invoice adjustments and promptly refund any overpayments to Tolko.

#### **43. BUSINESS STANDARDS**

- 43.1 The Contractor, in performing its obligations under the Contract, shall establish and maintain appropriate business standards, procedures, and controls including those necessary to avoid any real or apparent impropriety or adverse impact on the interests of Tolko or any of Tolko's Affiliates. The Contractor shall comply with Tolko's business standards policies, including Tolko's policy which discourages the giving or receiving of gifts, entertainment, or favors of any kind.
- 43.2 The Contractor shall review with Tolko, on a regular and frequent basis during performance of the Contractor's obligations under the Contract, such business standards, procedures, and controls including, without limitation, those related to the:
- 43.2.1 activities of the Contractor's employees, agents and representatives, Subcontractors, and other third parties;
  - 43.2.2 avoidance of any conflict of interest; and
  - 43.2.3 giving or receiving of gifts, entertainment, or favors of any kind.
- 43.3 The Contractor represents that all financial settlements, reports, and billings rendered to Tolko under the Contract shall properly reflect the facts of all activities and transactions handled for Tolko's account and may be relied upon as being complete and accurate in any further recording or reporting made by Tolko for any purpose. The Contractor shall require the same covenant from its suppliers and Subcontractors involved in furnishing materials or services for Work.
- 43.4 The Contractor shall notify Tolko in writing promptly upon discovery of any failure to comply with Articles 43.1 or 43.3