

1. **ACCEPTANCE.** These Terms and Conditions for Engineering & Design Services are part of each quotation ("Quotation") by the Berry Metal Company ("Contractor") and each resulting contract for the provision by Contractor to the customer identified on such Quotation ("Customer") of the engineering and design services described in the Quotation. THE MAKING OF A CONTRACT ("CONTRACT") BETWEEN CUSTOMER AND CONTRACTOR IS EXPRESSLY CONDITIONED UPON CUSTOMER'S ASSENT TO THE PRICES AND TERMS ON THE FACE OF THE QUOTATION AND TO THESE TERMS AND CONDITIONS. AFTER SUCH ASSENT BY CUSTOMER, ALL THE PROVISIONS OF THIS QUOTATION AND OF CONTRACTOR'S ACKNOWLEDGMENT CONSTITUTE THE CONTRACT; (i) ISSUANCE OF A PURCHASE ORDER OR OTHER WRITING BY CUSTOMER IN RESPONSE TO THIS QUOTATION, AND (ii) ACCEPTANCE BY CUSTOMER OF CONTRACTOR'S PRODUCTS AND SERVICES, EACH CONSTITUTE SUCH ASSENT TO THESE TERMS AND CONDITIONS BY CUSTOMER. IN THE EVENT OF ANY CONFLICT BETWEEN CONTRACTOR'S AND CUSTOMER'S TERMS AND CONDITIONS, THE PROVISIONS OF THESE TERMS AND CONDITIONS SHALL PREVAIL UNLESS AGREED UPON IN WRITING BY BOTH PARTIES. All capitalized terms used in these Terms and Conditions and not otherwise defined herein shall have the meanings given to such terms in the Contract.

2. **NO OTHER TERMS.** No terms or conditions in addition to or different from these Terms and Conditions, whether contained in Customer's purchase, shipping or other documents, or elsewhere, shall be binding on Contractor (and are hereby expressly rejected by Contractor) and none of them shall be part of the Contract unless hereafter set forth in writing and signed by Contractor's authorized representative.

3. **INDEPENDENT CONTRACTOR.** Contractor shall be an independent contractor with respect to all of the engineering and design services to be provided ("Work") as set forth in this Contract. Neither Contractor nor its subcontractors, sub-consultants, or agency personnel, nor the employees of any of them, shall be deemed to be the employees of Customer.

4. **NONDISCLOSURE.** Neither the Customer nor Contractor shall disclose, make reference to, publicize,

describe, or illustrate to others that the Customer has purchased, or plans to purchase, engineering and design services or materials from Contractor without the prior written consent of the other party, except when required by law.

5. **PERFORMANCE AND WORKMANSHIP.** The services shall be performed with the degree of skill and care that is required by competent professional procedures and practices, and in conformance with generally accepted professional engineering standards prevailing at the time the work is performed. Where specified, materials, parts and finishes will be to the Customer standards specifically made known to Contractor in writing from the Customer. The Customer's identification numbers will be used when specified in writing to Contractor. The Customer will furnish Contractor with all necessary information, design data and sample prints in order to enable Contractor to conform with the Customer's production drawing practices. Contractor shall be responsible for the accuracy of design, plans, drawings, layouts and other services prepared or performed by Contractor on the Work. Except as specifically set forth in the Contract, Contractor makes no other warranties or representations, express or implied, with respect to the Work.

6. **CORRECTION.** Subject to the limitations and qualifications contained in Paragraph 24 below, Contractor shall, for a period of twelve (12) months from the date of completion of the Work, at its expense, correct any material and significant defects or inaccuracies in its design, engineering, drafting, and/or related services, but only to the extent that such defects or inaccuracies are not in any way attributable or related to any act or omission of the Customer or any of its employees, agents, consultants, contractors, representatives or subcontractors, including, without limitation, with respect to any materials, information, data or any other item, product or service supplied by the Customer or any of its employees, agents, consultants, contractors, representatives or subcontractors.

7. **CUSTOMER DATA.** Customer shall supply to Contractor for reference purposes in all areas where Contractor is involved, drawings, sepias, design calculations, foundation loadings, surveys, and other pertinent information and documentation as required for the performance of Contractor's engineering and design services hereunder. Contractor shall use and rely upon the accuracy of the all such reference documents and shall

not be responsible for verifying the accuracy of any such documents or material except as expressly defined in the project scope of work. Should any defects, errors, or omissions exist in the reference documents, drawings or specifications, Contractor, before proceeding with the Work, shall immediately notify the Customer in writing, and shall not proceed with any work affected thereby except in accordance with written instruction from the Customer.

8. NO GUARANTEE OF ESTIMATES. Since Contractor has no control over the cost of labor, materials, equipment, or services furnished by others, or over the contractors' methods of determining prices or over competitive bidding or market conditions, Contractor's opinions (estimates) of probable total project and construction costs are made on the basis of Contractor's experience and qualifications and represent Contractor's best judgment as to the probable total project or construction costs. Contractor cannot and does not in any manner guarantee that proposals, bids, or actual total project or construction costs will not vary from estimates of probable cost prepared by Contractor depending upon the timing of construction, changed conditions, availability of materials, and other factors beyond Contractor's control. Contingencies are to be expected during the construction process, and the Customer should make arrangements to have the necessary funds to cover any such contingencies that may arise.

9. CHANGES AND ADDITIONAL SERVICES. The Customer may, by submittal to Contractor of a properly authorized Change Order form duly executed by its Project Manager, request changes in the Work, authorize additional services, or reduce the scope of Work, all of which shall be performed under the applicable conditions of the Contract. In all cases where the dollar amount or character of the Work is affected, Contractor must, within ten (10) business days from receipt of a properly authorized Change Order form advise the Customer of any impact or adjustment of Contractor's compensation which shall be determined in one of the following ways: (i) by mutual acceptance of an adjusted lump sum price based on Contractor's submission of a written estimate of the cost of the change or additional Work, which shall include the cost of the Work and the impact costs, if any, of adding the Work and/or extending the schedule; or (ii) on a time-and-material basis as provided in the Contract. No changed or additional Work shall be commenced prior to the issuance of a properly approved Change Order issued by the Customer's Project Manager.

10. CONFIDENTIALITY. The terms and conditions of any existing confidentiality or non-disclosure agreement between Contractor and Customer shall supersede and take precedence over the terms of this Section 10. Each of Contractor and Customer acknowledges that it has and/or will receive from the other party or its affiliates, customers, contractors or other representatives (individually, a "Disclosing Party" and collectively, "Disclosing Parties"), and will acquire and generate as the result of its performance of the Work, certain information of a confidential or proprietary nature relating to the Disclosing Parties, their customers and/or their facilities or other property, and/or the technology being incorporated into the Work. Each of Customer and Contractor agrees not to publish or otherwise disclose to others or use for its own purposes any such confidential or proprietary information received from a Disclosing Party. The only exceptions to the foregoing obligations of confidentiality and non-use shall be information that (i) was already in its possession prior to receipt from a Disclosing Party or its creation in connection with this Contract; (ii) was or becomes a matter of public knowledge through no fault of the recipient; or (iii) is received by the recipient from a third party who, to the best of the recipient's knowledge and belief, has the free right to disclose the information and is under no obligation of confidentiality to any Disclosing Party. Contractor and Customer agree that money damages may not be a sufficient remedy for any breach of this Article and that the a Disclosing Party may be entitled to specific performance or other injunctive relief and any other appropriate equitable remedies that a court of competent jurisdiction may deem appropriate. No equitable remedy shall be deemed exclusive but will be in addition to all other remedies available at law, in equity or otherwise.

11. FORCE MAJEURE. No liability shall result to either party from delay in performance or nonperformance caused by circumstances beyond the control of the party who has delayed performance or not performed. The nonperforming party shall be diligent in attempting to remove the cause(s) and shall promptly notify the other party of its/their extent and probable duration. If the party who has delayed performance or not performed on account of circumstances beyond its control is unable to remove the cause(s) within thirty (30) days, the other party shall have the right, without penalty, but subject to the provisions of Paragraph 21 below), to terminate the entire Contract or any portion of it affected by the delay in performance or nonperformance.

12. AS-BUILT DRAWINGS. In the event that Customer requests Contractor to provide as-built drawings, the as-built or record drawings will only contain the changes made during construction or manufacture that are reflected on the marked-up prints and drawings and other data furnished by the Customer's construction or manufacturing contractor to the Contractor and that Contractor considers significant. The final drawings may not reflect all details of the project as actually built and will depend upon the accuracy of the construction or manufacturing records maintained by the Customer's construction or manufacturing contractor. Contractor shall not be responsible for verifying as-built conditions when requested to prepare final record drawings of the project.

13. POSSESSION, USE AND OWNERSHIP OF WORK. All drawings (including without limitation all schematic layouts, plans and designs, sketches, charts, conceptual design criteria, and other graphic and pictorial documents and electronic data or media showing the design, location or dimensions of the Work), specifications and other descriptions of the Work, and other documents and electronic data or media generated by or for Contractor in connection with completion of the Work and fulfillment of Contractor's obligations hereunder (collectively, "Design Documents"), shall be deemed to be instruments of service with respect to the project covered by this Contract and Contractor shall retain a property interest therein whether or not the project is completed. Upon the full payment by Customer to Contractor of all amounts due Contractor under the Contract, the Design Documents become the exclusive property of the Customer, and the Customer shall have the right to take possession of, or use, the Design Documents or any completed portion thereof at any time after full payment of all amounts owed to Contractor under the Contract; provided, that Customer's reuse of the Design Documents shall be subject to verification or adaptation by Contractor. In the event that Customer reuses the Design Documents without Contractor's verification or adaptation, the Customer shall indemnify, defend and hold harmless Contractor from all claims, damages, losses, and expenses of any nature, including attorneys fees, arising out of or resulting from the unverified reuse of the Design Documents. All Design Documents shall be delivered to the Customer upon the later of the completion of the Work or full payment by Customer to Contractor of all amounts due Contractor under this Contract, provided that Contractor may retain

copies for archival purposes. The Customer's ownership thereof shall include common law and statutory copyright and federal "architectural works" protections. The Customer shall have the unrestricted right to use Design Documents for any purpose it deems advisable, including completion or construction of the project for which the initial design was made and/or completion of other projects, subject to verification and adaptation by Contractor as noted above. Contractor shall have a perpetual and royalty-free license to reuse the Design Documents, the design and components of the design without the prior approval of the Customer, subject to Contractor's obligation of confidentiality herein.

14. OWNERSHIP OF INVENTIONS. Subject to the provisions in Section 13 above with respect to Design Documents, all project intellectual property (hereinafter "PIP") means property and the legal rights therein that either or both Contractor or Customer currently have, create, develop or reduce to practice during the performance of the Work and the related projects under the Contract, including inventions, discoveries, tangible property, software, materials, mask works, methods, techniques, formulae, data and processes. Any PIP already owned by Contractor or created, developed or reduced to practice solely by Contractor's personnel will be owned by Contractor ("Contractor PIP"). Any PIP already owned by Customer or created, developed or reduced to practice solely by Customer's personnel will be owned by Customer ("Customer PIP"). Any PIP created, developed or reduced to practice jointly by Contractor personnel and Customer personnel will be jointly owned by Contractor and Customer as determined by applicable U.S. law or as set forth in a mutual written agreement between Contractor and Customer ("Joint PIP"). For solely owned PIP, the owner shall be responsible for all decisions, actions and costs relating to obtaining patent protection for such PIP. For Joint PIP, the parties shall mutually agree upon and jointly share responsibility for decisions, actions and costs relating to obtaining patent protection or other intellectual property protection for such Joint PIP. Either Contractor or Customer can freely practice any Joint PIP for any purpose, including licensing to third parties, without consultations with the other owner and without any accountability or compensation to the other owner; provided, however, that neither party may enforce any such Joint PIP without the agreement of the other party, unless such enforcement right is expressly granted in a written agreement between the parties. In the event that Contractor and Customer agree to an exclusive license

agreement regarding any Joint PIP, the terms of such exclusive license agreement will take precedence over the license rights specified in this Section 14.

15. COMPLIANCE WITH LAWS. In performance of this Contract, each party shall comply with all federal, state and local laws, statutes, rules, regulations and orders, as amended from time to time, applicable to each party or the Work (collectively "Laws"), including but not limited to the following: (1) the Fair Labor Standards Act; (2) all other laws pertaining to labor, wages, hours, and other terms and conditions of employment; (3) the Immigration Reform and Control Act; (4) the Americans with Disabilities Act; (5) all other laws pertaining to the employment of aliens and to non-discrimination and affirmative action in hiring and employment; (6) the Drug-Free Workplace Act; (7) environmental laws; (8) the Occupational Safety and Health Act; and (9) the Mine Safety and Health Act.

16. INDEMNIFICATION. Subject to the limitations set forth in Paragraph 24 below (Limitation of Liability), Contractor shall, to the extent permitted by law, hold harmless and indemnify the Customer from and against any and all liens, claims (including those of the parties, their agents and employees), liability, loss, damages, fines, judgments, and penalties, including reasonable attorney's fees, costs and settlements, which may arise out of or be connected with the performance by Contractor of the Work under this Contract by reason of any (i) act or omission, negligent or otherwise, of Contractor, or any of Contractor's sub-contractors, and their respective agents, servants, employees, invitees, and licensees for which Contractor is legally liable, or (ii) breach of this Contract by Contractor; provided, however, that in no event shall Contractor be obligated to indemnify the Customer against such liens, claims, losses, damages, fines, judgments and penalties to the extent resulting from or contributed to by the negligence in any form, joint or contributory of the Customer, or those acting for or on the Customer's behalf, or any defect in, or condition of, the premises wherein the Work is performed, or any materials furnished by or on behalf of the Customer. The liability, loss or expense covered by the indemnity obligations of Contractor set forth in this paragraph includes settlements, judgments, court costs, reasonable attorneys' fees and other litigation expenses incurred by the Customer arising out of (a) injury to or death of any person, including employees of Contractor or the Customer, or (b) loss of or damage to property, including property of Contractor or the Customer.

Subject to the limitations set forth in Paragraph 24 below (Limitation of Liability), the Customer shall, to the extent permitted by law, hold harmless and indemnify Contractor from and against any and all liens, claims (including those of the parties, their agents and employees), liability, loss, damages, fines, judgments, and penalties, including reasonable attorney's fees, costs and settlements, which may arise out of or be connected with the performance by the Customer under this Contract by reason of any (i) act or omission, negligent or otherwise, of the Customer or any of the Customer's sub-contractors, and their respective agents, servants, employees, invitees, and licensees for which the Customer is legally liable, or (ii) breach of this Contract by the Customer or (iii), or any defect in, or condition of, the premises wherein the Work is performed, or any materials furnished by or on behalf of the Customer; provided, however, that in no event shall the Customer be obligated to indemnify Contractor against such liens, claims, losses, damages, fines, judgments and penalties to the extent resulting from or contributed to by the negligence in any form, joint or contributory of Contractor, or those acting for or on Contractor's behalf. The liability, loss or expense covered by the indemnity obligations of the Customer set forth in this paragraph includes settlements, judgments, court costs, reasonable attorneys' fees and other litigation expenses incurred by Contractor arising out of (a) injury to or death of any person, including employees of Contractor or the Customer, or (b) loss of or damage to property, including property of Contractor or the Customer or (c) damage to the environment.

17. INFRINGEMENT. The Customer shall indemnify, defend and hold and save harmless Contractor and its owners, directors, officers, employees, agents and representatives from liability of any kind, including reasonable legal costs and expenses, resulting from any and all legal actions based on actual or alleged infringement of any patent, copyright, trade secret, trademark, mask work or other intellectual right arising out of product(s) and/or service(s) that are manufactured, sold, provided and/or purchased by Contractor in compliance with any design specifications of Customer. Customer shall also pay any settlement entered into by Customer, or any damages, losses, costs, liabilities and expenses (including reasonable attorneys' fees) finally awarded in any such legal action.

18. SPECIAL INDEMNIFICATION. In the event that Contractor provides engineering and design services only and is not contracted to provide the construction or manufacturing services normally associated with the completion of a project such as (i) interpretation and clarification of project documentation furnished and modification of same as circumstances revealed during bidding, construction or manufacture may dictate, (ii) in connection with acceptance of substitute or equal items, materials, and equipment proposed by bidders, contractors or manufacturers, (iii) in connection with review of shop drawings and sample submittals, and (iv) other services normally provided during the construction or manufacture phase, Contractor will not be responsible and shall have no liability, and the Customer shall indemnify, defend and hold harmless Contractor from all claims, damages and expenses, including attorneys' fees, of any nature arising out of or resulting from the construction or manufacturing services being provided by the Customer or others.

19. AUDITS AND INSPECTIONS. Contractor agrees to maintain, in accordance with generally accepted accounting principles and practices, such records as may be necessary to adequately reflect the accuracy of Contractor's charges and invoices for reimbursement under this Contract and such other additional records as the Customer may from time to time reasonably require in connection with the Contract. Such records shall be preserved by Contractor for a minimum of two (2) years after date of final payment without additional reimbursement or compensation therefore.

20. PAYMENTS FOR WORK. Unless otherwise specified by the Customer in the Contract, the following terms for progress payments shall apply: Contractor's compensation shall be paid as it accrues in monthly installments, based upon hours worked and expenses incurred for the applicable percentage of completion of the Work as determined from estimates submitted to and approved by the Customer. Contractor shall maintain current time records for each of its personnel showing the hours worked on the applicable project and upon the request of Customer, a copy of such time records will be submitted along with the invoicing for supporting documentation of the hours worked. All reimbursable expenses will be separately identified on all invoicing. Contractor shall charge for clerical work when performing engineering-related work such as the typing of bills of material, specifications and special reports in accordance with the applicable rates as provided by the

Contractor to Customer. Additionally, Contractor shall charge the Customer for all reasonable expenses incurred by Contractor for any work stoppage caused by any actions or failure to act by the Customer or any of its employees, agents or representatives. Each total invoice amount is due and payable by Customer to Contractor within thirty (30) calendar days after the invoice date. Upon receipt of payment from the Customer, Contractor shall promptly pay each subcontractor or supplier the amount to which such subcontractor or supplier is entitled, less the actual percentage retained, if any; and Contractor shall require each subcontractor to similarly make prompt payments to each of its sub-subcontractors and suppliers. Payment shall be considered made when Contractor has received the payment.

21. TAXES. Contractor shall assume full responsibility for the payment of all federal and state taxes of whatever sort, Social Security, Unemployment Compensation, and other withholding taxes and charges applicable to Contractor's actions, employees, facilities and materials for performing services or applicable to Contractor's income hereunder. It will require each of its subcontractors, if any, to do the same.

22. TERMINATION. The Customer may terminate this Contract at any time without cause or liability except for obligations or liabilities due for services rendered prior to the effective date of termination as set forth below. In such event, the Customer shall give Contractor not less than thirty (30) days' advance written notice of its intent to terminate. Upon any such termination, Customer shall promptly pay and Contractor shall be entitled to recover costs and expenses incurred in connection with (i) all work done and not previously paid, (ii) all work in progress and (iii) the reasonable disengagement of personnel, equipment and utilities that accrue costs after the notice of termination, plus a reasonable profit provided the total amount shall in no event exceed the total Contract price. The preceding sentence shall also apply in the event of a force majeure termination as provided in Paragraph 11 above. Termination under this Article or under any other Article of this Contract shall not relieve or release either party hereto from any rights, liabilities, or obligations which it has accrued prior to the date of such termination.

23. MODIFICATIONS TO AGREEMENT. The terms and conditions of this Contract, as stated herein, may not be added to, superseded, changed, varied, or otherwise modified, except by written agreement duly executed by

the Customer and Contractor which expressly refers to this Contract and the specified provisions thereof which are being affected by such other written agreement.

24. LIMITATION OF LIABILITY. In no event shall either party be liable to the other party for any incidental, special, consequential, indirect or punitive damages arising out of this Contract or the work to performed thereunder; including, without limitation, the Contractor shall not be liable in any event for any such incidental, special, consequential, indirect or punitive damages or losses of the Customer arising out of this transaction or the use or misuse of goods or services or any part thereof, under a breach of warranty (expressed or implied including, without limitation, implied warranties of merchantability or suitability for purposes of design) or contract or as a result of any negligence, strict liability, or other tort by any supplier or contractor who provides goods or services in accordance with the contract documents as furnished by Contractor. The Customer and Contractor acknowledge that Contractor provides its services within industry standards of due care, and that there may be errors and omissions in the applicable documents related to the project. Contractor recommends that Customer establish a contingency budget to cover the direct and indirect costs associated with any such errors or omissions that may arise. The Customer and Contractor agree that the Contractor's project manager and project team will provide services and additional drawings as necessary to help correct and alleviate the situation created by any errors or omissions without additional compensation from the Customer, except to the extent that any such errors and omissions are not attributable or related in any way to any act or omission by the Customer or any of its employees, agents, consultants, contractors, representatives or subcontractors, in which case the Customer shall provide reasonable compensation to Contractor with respect to any services provided by Contractor to correct any such errors or omissions. The Customer and Contractor agree that the provision of such professional services by Contractor in such situations involving errors and omissions not attributable or related to any act or omission by the Customer or any of its employees, agents, consultants, contractors, representatives or subcontractors, is the full limit of Contractor's liability regarding such matters. The Customer and Contractor further agree that Contractor is not responsible for making any payments on any part of the costs of labor, materials, or any other costs or expenses that may arise as a result of any errors or omissions in the project, regardless of the

direct or indirect cause of any such errors or omissions. The Customer expressly agrees that the remedies provided to it in this Contract are exclusive and that under no circumstances shall the total aggregate liability of Contractor, whether based in contract, indemnity, tort (including negligence) strict liability or any other theory of law, exceed the total amount of all payments made by Customer to Contractor under this Contract.

25. RESERVATION OF RIGHTS. The waiver by a party of any of its remedies afforded hereunder or by law is without prejudice and shall not operate to waive any other remedies which such party shall have available to it, nor shall such waiver operate to waive such party's right to any remedies due to a future breach, whether of a like or different nature.

26. SEVERABILITY. In the event that any Article(s) of this Contract shall be found to be void or unenforceable, such findings shall not be construed to render any other Article of this Contract either void or unenforceable, and all other Articles shall remain in full force and effect unless the Article(s) which is/are void or unenforceable shall substantially affect the rights or obligations granted to or undertaken by either party.

27. ASSIGNMENT. This Contract shall not be assignable by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld.

28. GOVERNING LAW AND JURISDICTION.

This Contract shall be governed and construed under the laws of the Commonwealth of Pennsylvania. The parties agree that any action at law, suit in equity or other judicial proceeding with respect thereto may be brought and maintained in the federal and state courts of record situate in the Commonwealth of Pennsylvania; and that the mailing to the last known address of the respective parties of any process by certified mail, or service of process by such other means as authorized by any such court, shall constitute lawful and valid service of process. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

29. HEADINGS. The headings of the Articles of these "Terms and Conditions for Engineering & Design Services" are inserted for convenience only and shall not constitute a part hereof.