

# CHRYSLER'S GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION PROJECTS ON CHRYSLER PROPERTY

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# CHRYSLER'S GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION PROJECTS ON CHRYSLER PROPERTY

## 1. Definitions

"Additional Contract Documents" means the documents, if any, which are so designated in Chrysler's purchase order issued to Contractor for the Project.

"Architect" means the architect employed by Chrysler to oversee performance of the work covered by the Contract. If no architect is employed by Chrysler, Chrysler's Resident Engineer or other authorized representative specifically designated by Chrysler may perform the duties ascribed to the Architect in the Contract.

"Bulletin" means a form used by Chrysler to describe a change in the Specifications and to request Contractor's quotation for the change in cost of the proposed change in the Specifications.

"Contract" means the legal contract, as amended by Modifications, between Contractor and Chrysler formed by (1) these general terms and conditions (including the attached Appendix A), (2) the terms of Chrysler's purchase order (including its general terms and conditions and the clauses referenced in the order), (3) the Specifications, (4) the Drawings, and (5) any Additional Contract Documents.

"Contract Documents" means Chrysler's purchase order (including its general terms and conditions and the clauses referenced in the order), this document (including the attached Appendix A), the Specifications, the Drawings, any Additional Contract Documents identified as such in the purchase order, and any Modifications issued after execution of the Contract.

"Chrysler" means Chrysler Group LLC unless the purchase order for the Project is issued in the name of a Chrysler Group LLC subsidiary, in which case "Chrysler" means that subsidiary.

"Drawings" means the drawings for the Project prepared by or for Chrysler and signed by Chrysler's authorized representative, and includes any subsequent modification or substitution approved and signed by Chrysler's authorized representative.

"Environmental Laws" means all federal, state and local laws, rules, regulations and ordinances relating to pollution or protection of human health or the environment. Environmental Laws include but are not limited to the Comprehensive Environmental Response, Compensation and Liability Act, as amended; the Resource Conservation and Recovery Act, as amended; the Toxic Substances Control Act, as amended; the Clean Water Act, as amended; and the Clean Air Act, as amended; and the Occupational Safety and Health Act, as amended.

"Field Order" means a form used by Chrysler to authorize changes in the work to be performed under the Contract by ordering either the commencement of work described in an approved Bulletin or an immediate change in the Specifications and the

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commencement of the resulting work. In the latter case, Chrysler will prepare a confirming Bulletin to document the change in the Specifications.

"Regulated Material" means all chemicals, pollutants, contaminants, contaminated material, wastes and toxic substances, including without limitation the following items as defined in any Environmental Law: (1) solid or hazardous waste; (2) hazardous substances; (3) toxic substances; (3) insecticides, fungicides, or rodenticides; and (4) gasoline or any other petroleum product or byproduct, asbestos, polychlorinated biphenyls, and urea formaldehyde.

"Modification" means (1) a change to the Contract authorized by Chrysler in a Field Order, (2) a change to the Contract authorized or approved in writing by Chrysler in accordance with Section 23 below, or (3) a written amendment to the Contract signed by both parties.

"SE&E" means Chrysler's Stationary Environmental & Energy Department or its successor.

"Project" means the construction and services required to be provided to Chrysler by Contractor under the Contract, whether partially or fully completed, and includes all services, labor, equipment and materials provided or to be provided by Contractor to fulfill its obligations under the Contract.

"Resident Engineer" means the person authorized and designated by Chrysler to act with respect to the Project.

"Specifications" means the written requirements and standards for materials, equipment, systems, workmanship, and services made applicable to the Project by Chrysler.

## **2. Order of Precedence**

In the event of direct conflict between terms in different Contract Documents, terms contained in the document enumerated under the definition of "Contract" above with the lowest number shall control.

## **3. Survey and Legal Description**

If Chrysler deems it necessary, Chrysler will furnish Contractor with a legal description and a survey of the job site showing lot lines and permanent benchmarks. Any other line or level necessary for location or performance of the Project must be established and maintained by a competent surveyor hired and paid for by Contractor.

## **4. Examination and Investigation by Contractor**

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Contractor acknowledges and represents to Chrysler that it has, prior to entering into the Contract, carefully examined all Contract Documents, has made adequate investigation of and become familiar with the conditions of the job site, other construction activities existing or planned on or adjacent to the job site, the work required to be performed under the Contract, and the materials needed to complete the Project, and has correlated its observations and other information available to it with the requirements of the Contract Documents. Before commencing construction activities, Contractor shall take field measurements and verify field conditions and carefully compare such field measurements and conditions and other information available to Contractor with the Contract Documents. Contractor shall be solely responsible for all costs incurred as a result of any failure by Contractor to comply with its obligations under this Section, any error or oversight on its part, or any interference by Chrysler's or other contractors' reasonable activities.

Contractor shall immediately report to Chrysler any errors, inconsistencies or omissions discovered in the Contract Documents. Chrysler's interpretation of the Specifications and Drawings, or of any inconsistencies between or within them, shall be final and binding upon Chrysler and Contractor. Contractor shall not avail itself of any manifest errors or omissions in the Contract Documents.

## **5. Performance Bond**

If requested by Chrysler, Contractor must secure a performance bond, in a form and from a surety company satisfactory to Chrysler. Contractor will pay the premium on such bond for which Chrysler will reimburse Contractor. Chrysler's obligations under the Contract are contingent upon Contractor securing such performance bond if and when requested.

## **6. Bids and Prices**

Contractor's base bid shall be in accordance with the Specifications. Contractor shall also submit alternate written bids with high probability of success, as Supplier Cost Reduction Effort (SCORE) proposals, at the time of bid. Each alternate bid must be clearly identified as an alternate and must identify all exceptions taken to the Specifications, listing each item separately and the reason for the exception. Contractor's bids shall include all premium time and/or overtime required to properly complete the Project within the construction period specified. If Chrysler or its representative requests Contractor in writing to work additional premium or overtime at Chrysler's expense, Contractor will work such additional hours or shifts as are required to comply with Chrysler's request. Contractor shall submit to Chrysler any alternate price, unit price and separate price that Chrysler may require. All prices quoted shall be firm and with no provision for escalation, unless

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otherwise specified in writing when the Contract is awarded. Prices must indicate whether taxes are included or in addition to the price.

When the Specifications provide for a specific item or its equal, Contractor shall calculate the price of the make or type specified. If Contractor prefers to use a substitute material or method that Contractor believes to be of equal or greater value than the specified item, Contractor shall state in its bid proposal the price difference that must be added to or deducted from the bid price if the specified item were replaced by the substitute. If substitute materials include regulated substances, Contractor shall submit a completed "Supplier Regulated Substances Certification Report" to Chrysler in accordance with Environmental Technical Instruction (ETI) 103, the receipt of which Contractor hereby acknowledges.

If a choice of more than one make or type of article or material is specified and Contractor requires an adjustment in the bid price because of the alternatives specified, Contractor shall state in its bid proposal the make or type upon which the bid proposal is based and the amount to be added to or deducted from the bid price if other makes or types named in the Specifications are selected. If that type of statement is not in Contractor's proposal, Chrysler may select any specified make or type without incurring a change in the price. In any event, whenever Chrysler has a choice of alternate materials, the final selection is Chrysler's.

Chrysler may accept or reject any proposal or parts thereof and may award the Project to someone other than the low bidder. All proposals must remain in effect for at least thirty days after the bid date.

## **7. Contractor's Obligations**

Unless otherwise provided in the Contract, Contractor shall provide, be responsible for, and pay for all labor, materials, equipment, construction machinery, tools, heat, water, utilities, transportation, and other services and facilities used to properly complete the Project in accordance with the Contract Documents. Contractor shall pay all taxes, contributions and premiums payable under federal, state and local laws measured upon the payroll of employees engaged in the Project and will hold Chrysler harmless from liability for any such taxes, contributions and premiums.

Contractor shall promptly secure and pay for all permits, licenses and inspections and, after providing notice to the Resident Engineer, give all notices required by, and will fully comply with, all laws, ordinances, rules, regulations and lawful orders of proper public authorities in connection with the execution and completion of the Project. At the request of Chrysler and without additional charge, Contractor shall (a) prepare and record with the appropriate register of deeds a notice of commencement for the Project, naming Contractor as both the owner's designee and the contractor and (b) supply a copy of the notice of commencement to Chrysler and to all subcontractors and suppliers of labor and materials for the

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Project who request it. Contractor shall keep track of all notices of furnishing supplied by contractors and subcontractors for work performed on the Project.

Contractor shall pay all sales, use, excise, transportation, privilege, occupational and other taxes applicable to the Project or to supplies or materials furnished thereto, and will hold Chrysler harmless from liability for any such taxes.

Contractor shall employ a superintendent and, as necessary, designated assistants who will be present and maintain competent superintendence on the job site when work is in progress. Contractor shall promptly remove from the Project any employee of Contractor or of its subcontractors whose presence Chrysler or its designated representative deems to be disruptive or detrimental to the progress of the Project.

Contractor shall cooperate with and upon request render assistance to Chrysler, including participating in meetings called by Chrysler's representatives and furnishing Chrysler with levels and measurements on the job site.

Contractor shall be responsible for all cutting, fitting and patching required to complete the Project or to make its parts fit together properly. Contractor shall defend, indemnify and hold Chrysler harmless from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses and costs, including attorney fees and interest, incurred by, claimed or assessed against Chrysler arising out of or resulting from any claim of infringement of patent, copyright, trademark, design right or any other intellectual property right, or of misappropriation of trade secret, by reason of (a) work performed, materials used or equipment furnished by Contractor or its subcontractors or (b) any breach by Contractor of the Contract. Contractor shall pay all royalties and license fees necessary for Chrysler to have full and free use and enjoyment of the Project during construction and thereafter.

Contractor is responsible for handling, storing, removing and disposing of any Regulated Material or potentially Regulated Material located on or near the job site and for complying with all applicable laws, regulations, rules and ordinances, including Environmental Laws. Without limiting the foregoing, Contractor must properly store and contain drummed and tank materials, and Contractor must seal or dike the floor or ground to contain any material that may spill or leak. Contractor will timely notify Resident Engineer of the manner in which Contractor handles, stores, removes, and disposes of Regulated Material.

Contractor shall prevent environmental contamination and is responsible for cleaning all soil, water or air contaminated by Contractor, its subcontractors or their activities. Contractor shall indemnify, defend, and hold Chrysler harmless from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses and costs, including attorney fees and interest, incurred by, claimed or assessed against Chrysler



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resulting from or in connection with any failure to fully comply with the provisions of this and the immediately preceding paragraph of this Section.

## **8. Role of Architect**

The Architect will assist Chrysler in verifying that the Drawings and Specifications are being properly executed and the work is performed by Contractor in accordance with the Contract. The Architect may reject any material furnished or installed and any work performed which does not meet the Contract requirements.

Chrysler may assign to the Architect the responsibility of supervising the work, including providing assistance and direction to Contractor to comply with the Contract Documents. Any such supervision and assistance will not relieve Contractor of any responsibility for the work or for the consequences of any negligence of Contractor or its subcontractors. Contractor must not perform any work contrary to the Contract or proceed in any manner which Contractor may later allege has caused it increased cost or other damage unless pursuant to the written instruction of the Architect. Contractor waives any claim it may have against Chrysler or the Architect for any cost or damage arising from Contractor acting on the verbal instruction of the Architect or Chrysler.

## **9. Job Site**

Contractor shall not unreasonably encumber the job site with materials or equipment and will confine its equipment, materials storage and the operation of its workers within such areas as Chrysler may indicate from time to time. Contractor shall, at no cost to Chrysler, move, as directed by Chrysler, material or equipment temporarily placed on the job site when necessary for performance of the Project. Contractor shall not load or permit any part of a structure to be loaded with a weight that will endanger its safety or the safety of the job site.

Contractor shall keep the job site and surrounding areas free from accumulation of waste materials or rubbish caused by operations under the Contract. Contractor shall upon completion of the Project and at other times upon specific request by Chrysler leave all buildings broom clean and remove from and around the job site waste materials, rubbish, tools, construction equipment, machinery and surplus materials. If Contractor fails to clean up to the satisfaction of Chrysler, Chrysler may do so at Contractor's expense.

Contractor shall afford Chrysler and Chrysler's other contractors, if any, reasonable opportunity for introducing and storing their materials and equipment and for performing their activities on the job site. Contractor shall carry on its work so as not to unduly hinder, delay or interfere with their progress. Contractor shall perform any cutting and altering of, and fitting to, its work to make possible other work, including that of trades not covered by the Contract, as indicated on the Drawings even though not specifically stated in the Contract Documents.

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Contractor and its subcontractors shall not disconnect, remove, connect, change or otherwise alter in any way any pipelines, sewers, conduits, cables or other utilities located on Chrysler's premises without the specific, prior written approval of Chrysler.

Contractor shall not store or use dynamite or other explosives on Chrysler's property without first consulting with Chrysler's safety representative and obtaining the express prior written approval by Chrysler. Contractor's use and storage of explosives is subject to Chrysler's safety rules as well as applicable law.

If required by Chrysler, Contractor shall furnish its employees and those of its subcontractors with a badge or a card, acceptable to Chrysler, which will identify them as employees of Contractor or its subcontractors, respectively, and admit them to the job site.

## **10. Soil Boring**

Contractor must ensure that all applicable regulatory permits and closure requirements are obtained and met. Unless applicable laws, regulations, rules, or ordinances require otherwise:

a. All borings or penetrations must be abandoned by sealing with impermeable grout, using the "tremmie" method, unless the borehole is to be immediately converted into a monitoring well. Contractor will mix grout using not more than 7.5 gallons of potable water and 2.5 pounds of bentonite per 80-pound bag of Type II cement. Contractor will refer any questions regarding these requirements to SE&E.

b. Contractor must ensure that a filling rod, pipe, or hose is placed so that it reaches the bottom of the borehole. The grout must be pumped into the borehole through its filling rod, pipe or hose, filling it from the bottom at a slow rate, in order to eliminate the formation of voids, until the grout reaches the top of the borehole. If loss or shrinkage occurs, the borehole must be refilled until it remains full to surface grade.

## **11. Surface Water and Erosion Control**

Contractor is responsible for providing, installing, and maintaining storm water control during any site activity that may alter normal surface drainage. Contractor must comply with all rules, regulations, laws, permits and ordinances of all authorities having jurisdiction.

Contractor may not work in, fill in, cause the drainage of or otherwise impact a wetland, as defined by applicable law, without proper authorization from all regulating agencies. Contractor will refer any questions regarding wetland requirements to SE&E.

Contractor is responsible for following all conditions specified in the approved wetland permit while performing any work that may effect the wetland.

Contractor will set up and maintain an erosion control program including the establishment of necessary containment facilities, to prevent discharge of soils and silts

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into the surface water drainage system and any adjoining wetland areas. Upon completion of Contractor's work, Contractor will remove the erosion control materials entirely and restore the area to its original configuration and obtain Chrysler's approval of the restoration.

## **12. Regulated Material**

Contractor must be observant and immediately report to SE&E and the Resident Engineer any Regulated Material encountered or discovered during excavation. Chrysler will make any notifications required by law, regulation, rule, or ordinance relating to Regulated Material encountered or discovered during excavation.

If Contractor discovers or encounters unexpected Regulated Material during excavation (including without limitation drums or drum fragments, or soil that has an odor or unnatural color), the conditions must be immediately reported to SE&E and the Resident Engineer. Work relating to the Regulated Material must cease until Contractor has consulted with the Resident Engineer and the Resident Engineer has directed Contractor to proceed.

Contractor will comply with all applicable laws, rules, regulations, and ordinances, including Environmental Laws, regarding the handling, storage, transportation and disposal of the Regulated Material, after consultation with the Resident Engineer.

## **13. Soil and Fill Materials**

Contractor shall not remove any soil, groundwater, waste or other material from Chrysler property without prior approval by Chrysler regarding the destination of the material. All shipments must be accompanied by appropriate Chrysler shipping documentation.

Contractor must utilize one of the following procedures to bring any soil or fill material onto Chrysler property:

- a. All soil or fill material must be tested and confirmed to meet regulatory standards by Contractor's independent environmental laboratory prior to receiving the soil or fill material for use on site. Material must be sampled and analyzed in accordance with applicable federal, state and local requirements to demonstrate that the material meets all requirements with respect to toxic or hazardous characteristics; or
- b. For each lot of soil or fill material used, Contractor must provide Chrysler with a written certification of the testing results in a form acceptable to Chrysler.

Contractor hereby indemnifies, defends and holds harmless Chrysler from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses and costs,

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including attorney fees and interest, incurred by, claimed or assessed against Chrysler resulting from or in connection with any Regulated Material that Contractor brings onto Chrysler property.

## **14. Materials and Equipment**

Contractor and its subcontractors shall purchase material and equipment only from sources approved by Chrysler and will promptly furnish to Chrysler a list of the manufacturers and suppliers from whom Contractor and its subcontractors propose to purchase material and equipment and, additionally, upon Chrysler's request, (a) priced copies of orders pertaining to materials and equipment and any available information relating to projected delivery dates and (b) samples of any material or finish to be used or applied to the Project, which samples shall be equal to the material or finish actually used or applied to the Project. Chrysler's approval or Contractor's furnishing of samples shall not relieve Contractor of its obligation to comply with the requirements of the Contract, including specifically the Specifications. All material and equipment used or ordered for the Project must, unless otherwise expressly permitted by the Contract Documents, conform to the applicable standards of American Society for Testing Materials, American Standards Association, American National Standards Institute, American Railroad Engineering Association, National Electric Code, National Fire Protection Association, Factory Mutual System, American Concrete Institute, American Institute of Steel Construction, and local and state building codes.

Unless specifically authorized by Chrysler in writing, all spray-on fireproof materials and spray-on thermal insulation must be non-fibrous and all paint applied must be lead-free.

Contractor shall be responsible for unloading, inspecting and storing all material and equipment owned or used by it for or in connection with the Project and for paying any demurrage that may accrue. Any material purchased by Contractor for use on the Project must be delivered directly to Contractor as consignee. Contractor shall be responsible for all Chrysler-supplied material from the time of its delivery to Contractor and will return any surplus of Chrysler-supplied material to Chrysler. No materials may be removed from the job site without Chrysler's prior written approval.

Contractor shall be responsible for all loss, damage or theft of equipment, tools, machinery and materials, whether owned or rented by Contractor, Chrysler or a subcontractor.

## **15. Reporting, Inspection and Testing**

All work and materials used or to be used for the Project shall at all times be subject to inspection and approval by Chrysler or its designated representative. Such inspection and approval, or the lack thereof, will not relieve Contractor of any of

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its obligations under the Contract. Contractor shall provide sufficient, safe and appropriate facilities for such inspection and will supply full information on all materials used. At Chrysler's request, all work performed at the job site or elsewhere without opportunity for inspection by Chrysler or its designated representative, whether by Contractor or its subcontractors, must be uncovered for inspection at Contractor's expense. Contractor shall keep Chrysler continually informed of the status of the Project, including any work in transit, in fabricating shops or elsewhere, and will be responsible for all delays resulting from failure to provide work in the proper manner and time. Contractor shall immediately report to Chrysler circumstances that may cause Project delays.

Contractor shall at its own expense field-test all equipment. The field-testing must take place in the presence of Chrysler's designated representative if so requested by Chrysler, and, in the case of any test on fire protection systems, Contractor will give Factory Mutual System reasonable advance written notice so that Factory Mutual System may witness the test. Contractor shall promptly submit a copy of the completed Contractor's Material & Test Certificate for Fire Protection Equipment to Factory Mutual System. Contractor shall shut down any equipment found to be defective and ensure that such equipment, until properly repaired or replaced, is not used by Chrysler employees or others.

Performance testing shall be performed by Contractor as required by the Contract Documents before acceptance of the Project by Chrysler. All tests must be performed under the supervision and direction of Chrysler's designated representative. Contractor shall provide all required materials, labor and apparatus necessary to perform the test or, if so directed by Chrysler's representative, engage an approved testing laboratory to perform the tests. Contractor shall deliver to Chrysler all manuals, drawings and written instructions regarding equipment upon Chrysler's acceptance thereof. Any work (including any system, material or equipment) shown to be defective must be removed, replaced and retested, all at Contractor's expense, until Chrysler is satisfied as to the performance of the item tested. Contractor is responsible for the cost of the original test if that test showed the work to be defective. Except for tests required by the Contract Documents, if a test required by Chrysler's representative demonstrates that the requirements of the Specifications have been fulfilled, the cost of that test will be paid by Chrysler.

## **16. Rental of Contractor-Owned Equipment**

If the rental fees (exclusive of payments for maintenance and lubricants) paid by Chrysler for use of any Contractor-owned equipment under the Contract exceeds the cost of such equipment as new, Chrysler, may at its option, either assume ownership of that equipment at the termination of the Contract or Chrysler may negotiate a nominal rental rate with respect to any further use of such equipment.

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## 17. Warranties

Contractor represents and warrants that all materials and equipment furnished under the Contract will be new (unless otherwise expressly permitted by the Contract), merchantable and of good quality, and that the Project will be free from defects and conform to the requirements of the Contract Documents. Work, material or equipment that does not conform to these requirements, including substitutions not properly approved or authorized by Chrysler, may be considered defective.

At any time prior to completion of the Project, Contractor will within 24 hours of receiving written request from Chrysler proceed to remove from the Project all defective materials, whether assembled or not, dismantle all portions of the Project which are defective, unsound, improper, or in any way fail to conform with the requirements of the Contract, and replace all such work and materials at its own expense. Expenses attributable to unsound, improper or unfit Chrysler-supplied materials, if any, will be borne by Chrysler. The deadline for completing the Project will not be extended because of any need to correct faulty work, equipment or material.

Contractor shall execute and deliver to Chrysler, before final payment, a written guarantee, for a term of two years from the date Chrysler accepts the Project, that all labor and material furnished, and all work performed, by Contractor and its subcontractors are in accordance with the Contract. (If the guarantee required under any trade section of the Specifications is for a period different than two years, Contractor's guarantee shall, with respect to such trade, be for that different period). Contractor shall obtain for Chrysler similar written guarantees from its subcontractors covering the subcontractors' respective portions of the Project, which guarantees must expressly provide that they are enforceable directly by Chrysler and run concurrently with Contractor's guarantee. Contractor shall repair or remove and replace, at Chrysler's convenience, and at no cost to Chrysler, all work or materials which Chrysler reasonably deems to be defective, at any time within two years following the date of final acceptance of the Project by Chrysler, except that this two-year limitation shall not apply with respect to any Regulated Materials that Contractor handles, stores, removes or disposes of. Contractor shall procure for Chrysler's benefit and pass on to Chrysler all warranties and guarantees received from manufacturers and suppliers.

## 18. Safety

Contractor and its subcontractors are responsible for their own health and safety and will coordinate health and safety concerns among themselves and with other contractors, if any, on the job site. If contractor is designated by the contract documents as the general contractor or the health and safety coordinator for the project, contractor

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has overall responsibility for the coordination and enforcement of health and safety for the project, including for all contractors and subcontractors.

Contractor shall, as required by performance of the Project and conditions existing at the job site, take, maintain and provide all reasonable precautions, protections and safeguards to prevent damage, destruction, injury or loss to its employees or other persons, to the Project or materials and equipment to be incorporated therein, to other property at or near the job site, or to adjacent properties, including without limitation posting danger and other warning signs, promulgating safety rules, and notifying owners and users of adjacent sites and utilities.

If Contractor encounters Regulated Materials during site activities, Contractor must notify the Resident Engineer immediately. Contractor must comply with the applicable regulations of the Occupational Safety and Health Administration for Hazardous Waste Operations and Emergency Response (HAZWOPER) in addition to all other applicable laws, rules, regulations and ordinances, including Environmental Laws. Contractor must provide documentation to Chrysler that all employees engaged in site activities have met at least the minimum HAZWOPER training requirements (29 CFR 1910.120(e)). Contractor must also document to Chrysler and ensure that employees engaged in site activities wear personal protective equipment, participate in a medical surveillance program, as required, and are certified by a licensed physician to work on hazardous waste sites, as required. Contractor must prepare and provide to Chrysler a site-specific Health and Safety Plan (HASP) in accordance with 29 CFR 1910.120. The HASP must include the following information: health and safety risk analysis for each task to be completed on site, employee training requirements, personal protective equipment requirements for each task, medical surveillance requirements, air monitoring protocols, site control provisions (including work zones, site communications, use of buddy system, site security measures, and standard operating procedures), decontamination procedures, confined space procedures, spill containment measures, drum handling procedures, and emergency response procedures. If conditions change, if applicable laws, rules, regulations, or ordinances change, if the scope of the work expands, or if additional hazards arise, Contractor must promptly revise the HASP accordingly. Contractor must provide a site safety officer who shall be responsible for implementation and enforcement of the HASP.

As detailed in the HASP, Contractor must provide and use air monitoring equipment that is appropriate for monitoring potential contaminants which may be encountered. The air-monitoring program must be implemented to ensure that appropriate personal protective equipment is used, that workers are not exposed to contaminants in excess of the permissible exposure limits, and that areas beyond the exclusion zone are not impacted by site activities. Contractor shall provide documentation that the air-monitoring instruments are calibrated in accordance with manufacturers' instructions and must record the air monitoring results.

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Contractor must provide the necessary personal protective equipment required to protect employees from potential physical and chemical hazards. All employees must be fitted and trained in specific personal protective equipment usage.

Contractor must establish site work zones, including an exclusion zone, contamination reduction zone, and support zone, to maintain site control and prevent the spread of contaminants. Appropriate decontamination procedures must be used for personnel and equipment exiting the exclusion zone.

Contractor must keep all documents (i.e., training records, medical surveillance certification, air monitoring results, instrument calibration data, etc.) on file for a minimum of three years.

Contractor must report immediately all emergency incidents to Chrysler Security and the Resident Engineer.

Contractor shall: (a) after giving notice to Chrysler, give such notices as it is required to give by, and comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities relating to safety or protection of workers, property and environment, including without limitation - OSHA standards, rules and regulations, Environmental Laws, and the following federal regulations: Hazard Communication (29 CFR 1910.1200 and 29 CFR 1926.59), Lead (29 CFR 1926.62), Asbestos (29 CFR 1926.1101), Permit-Required Confined Spaces (29 CFR 1910.146), Hazardous Waste Operations and Emergency Response (29 CFR 1910.120, 29 CFR 1926.65), as amended, replaced or succeeded from time to time; (b) comply with the provisions of Appendix A hereto and all other safety regulations of Chrysler, as amended from time to time; and (c) maintain good order and discipline among its employees. Contractor shall not employ on the Project any unfit person or any person not skilled in the work assigned to him or her, and will not use the Project as a training program for any employee. Contractor shall defend, indemnify and hold Chrysler harmless from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses and costs, including attorney fees and interest, incurred by, claimed or assessed against Chrysler arising out of or in connection with any breach or violation by Contractor of its obligations under this and the immediately preceding paragraph of this Section.

## **19. Fire Protection**

Contractor must provide and maintain during the construction period, at its own expense, the following material, equipment and services:

Contractor must install the fire service underground mains, yard hydrants, and connections to the water supply as soon as construction begins so that ample water is immediately available for fire fighting purposes.

Contractor must provide an adequate supply of hose, as determined by the Architect, to protect the construction area as soon as water is available. The hose must



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be either 1-1/2" or 2-1/2" approved cotton rubber lines fire hose in hose cabinets or carts and be equipped with combination water spray and solid stream nozzles.

Contractor must supply and maintain in constant working order during the construction period not less than four fire extinguishers conveniently located for proper protection of each building having 5,000 square feet or less of total floor area. One additional fire extinguisher must be provided for each additional 5,000 square feet of floor area. Each fire extinguisher must be either a 2-1/2 gallon capacity water type gas cartridge expelled unit or a 5-gallon capacity pump type protected from freezing by use of calcium chloride. All fire extinguishers must meet the approval of the Fire Underwriters' Laboratory and must be inspected at regular intervals and recharged if necessary.

Contractor must supply 15-lbs. carbon dioxide type or 20-lbs. dry chemical type fire extinguishers in areas of flammable liquids, asphalt or electrical hazards.

Contractor must place automatic sprinkler systems, inside standpipes and hose in service as construction proceeds. As each sprinkler system is completed and placed in service, the control valves must be sealed. Only the Architect may allow Contractor to break the seals and close the sprinkler valves.

## **20. Security**

If requested by Chrysler, Contractor will provide, at its own expense, guard service acceptable to Chrysler as described in this Section. Guards must be on duty and patrol the entire site, including yard area, temporary contractors' offices and storage buildings, at least once an hour during all hours the building tradesmen are not working. Recording watchmen's clocks may be used at the discretion of the Architect. Guards must be mature, reliable, trustworthy, physically fit, have good judgment, and be mentally and morally responsible. In case of an emergency, the guards must follow such instructions as they may have been given regarding specific procedures and steps to be taken during such emergency.

Contractor will be responsible to Chrysler for the acts, omissions or negligence of the guards and their employer. Contractor shall defend, indemnify and hold Chrysler harmless from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses and costs, including attorney fees and interest, incurred by, claimed or assessed against Chrysler arising from or in connection with the actions, omissions or negligence of the guards and their employer. Contractor's obligation to defend and indemnify shall survive termination of the Contract.

## **21. Subcontractors**

Contractor shall not subcontract under or assign the Contract or any part thereof without the prior express written approval by Chrysler. In any subcontracting hereunder, Contractor shall by written agreement require each subcontractor to

# **CHRYSLER'S GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION PROJECTS ON CHRYSLER PROPERTY**

assume toward Contractor, to the extent of subcontractor's work on the Project, all obligations and responsibilities which Contractor, by the Contract, assumes toward Chrysler. Each subcontract shall preserve and protect the rights of Chrysler under the Contract Documents with respect to the work to be performed by the subcontractor so that the subcontracting will not prejudice such rights. Contractor shall require each subcontractor to enter into similar written agreements with its subcontractors.

Notwithstanding any approval or consent given by Chrysler, Contractor is responsible to Chrysler for the acts, omissions and performance of Contractor's employees, its subcontractors, their agents and employees, and any other persons or entities and their agents or employees performing any portion of the Project under contract with Contractor. Contractor shall defend, indemnify and hold Chrysler harmless from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses and costs, including attorney fees and interest, incurred by, claimed or assessed against Chrysler arising from or in connection with the actions, omissions or negligence of its employees, its subcontractors, their agents and employees, and any other persons or entities and their agents or employees performing any portion of the Project under contract with Contractor. Nothing in the Contract shall be deemed to create a direct contractual relationship between Chrysler and any subcontractor of Contractor.

## **22. Payment**

Chrysler will pay Contractor in accordance with the provisions of the Contract, which payment shall constitute full compensation to Contractor for all work performed and all things furnished under the Contract. Payment by Chrysler, whether in full or in part, will not be construed as a waiver of any breach of the Contract or as acceptance of defective or non-conforming work and will not relieve Contractor of its responsibility for performing in accordance with the Contract.

Interim payments, if any, will be made only after approval by Chrysler of the then-completed work. If interim payments are requested on a fixed-price contract, such payment will be calculated as a percentage of the total fixed-price contract cost using as basis the work completed at the time of billing. If interim payments are requested on a cost-plus or fee-type contract, such payments will be based on Contractor's actual material and labor costs as evidenced by employees' time cards and suppliers' invoices for materials and supplies delivered to and used at the job site. In making any interim payments, Chrysler may retain 10 percent of the amount of the invoice until final completion and acceptance of the Project by Chrysler.

Contractor is required to establish an Electronic Data Interchange (EDI) connection for processing requests for payment. Contractor shall concurrently send a hard copy request for payment to the Resident Engineer. Printed requests for payment

# **CHRYSLER'S GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION PROJECTS ON CHRYSLER PROPERTY**

must be accompanied by sworn statements, in a form acceptable to Chrysler, setting forth the contract amount, the contract amount owing as of the date of the sworn statement, the total amount previously paid, the unpaid balance, and the total amount of payment requested, and full or partial lien waivers of Contractor and each subcontractor for whose labor or materials payment is requested, and such other documentation as Chrysler may request. Contractor's sworn statement must include any other information that is customary or prescribed by any lien law or other law in the state in which material or labor is being supplied, including such information for each subcontractor whose work is included in the request for payment. Contractor agrees to indemnify, defend and hold Chrysler harmless from any liens, claims, and suits for labor performed or materials and supplies furnished in connection with the performance of the Project, including without limitation any attorneys' fees or related litigation expenses necessary to enforce Contractor's duty to indemnify, defend and hold Chrysler harmless. Contractor also agrees to promptly obtain (at its sole expense) and record a bond conforming to the applicable lien law to fully discharge any construction or other lien that may be recorded against the real property of Chrysler.

Chrysler may retain out of any payments due Contractor an amount sufficient to indemnify Chrysler from any loss or damage which might result from a claim or lien (including all costs and attorneys' fees), provided that upon payment of such claim or lien by Contractor the amount retained by Chrysler on account of such claim or lien will be paid to Contractor and, further provided, that if Contractor furnishes to Chrysler an indemnity bond issued by a bonding company or other surety approved by Chrysler in an amount, and in all other respects, satisfactory to Chrysler and indemnifying Chrysler against such claim or lien, the amount retained by Chrysler on account of such claim or lien will be paid to Contractor.

Final payment of all moneys due but not previously paid to Contractor will be made in accordance with the Contract after Chrysler accepts in writing Contractor's completed performance of the Project and Contractor furnishes Chrysler evidence satisfactory to Chrysler that all liens, claims, and suits chargeable to Chrysler or against CHRYSLER'S premises have been fully paid, satisfied, released, discharged or dismissed with prejudice.

Contractor hereby waives, on its own behalf and (insofar as it is able to legally contract in this regard) on behalf of its subcontractors and suppliers of materials and labor, the benefits of any mechanics lien, construction lien and similar liens available under the laws of the state in which such material or labor is being supplied.

## **23. Project Changes and Price Adjustments**

Chrysler may at any time, without voiding the Contract, propose or order changes to the Project, the Drawings and the Specifications, including, but not limited

## **CHRYSLER'S GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION PROJECTS ON CHRYSLER PROPERTY**

to, the omission of work previously ordered or the inclusion of additional work. Contractor will promptly, and in any event no later than fourteen days after receiving written notice of Chrysler's proposed change (which may be in the form of a Bulletin or order), submit to Chrysler in writing Contractor's firm quotation regarding the additional costs or credits, complete as a unit, and itemized in detail as to labor, material and other charges as further described in this Section. Contractor acknowledges that there shall be no increase in the purchase order price if the quotation is not submitted within thirty days from receipt of Chrysler's written notice or order or within such further time as Chrysler may allow in writing. However, if, in the opinion of Chrysler or the Architect, a credit is due Chrysler, Chrysler or the Architect may notify Contractor in writing at any time, and the claim for credit will be adjusted to the mutual satisfaction of Contractor and Chrysler before final payment is made. Contractor shall include in all subcontracts provisions necessary to secure any subcontractor's estimates and material prices within the time frame provided in this Section.

No claim by Contractor for increased compensation for any changed work (except when done pursuant to written authorization from Chrysler) will be considered unless written notice of the claim is given to Chrysler before commencement of the changed work. Modified Contract Drawings, without a written order, do not constitute written authority. Contractor shall proceed with the changed work when so ordered in writing by Chrysler in a Field Order. The provisions of the Contract shall apply to all changed work ordered by Chrysler with the same effect as if originally embodied in the Contract unless otherwise specifically agreed to by Chrysler in writing. Omission by Chrysler of any work previously ordered shall not entitle Contractor or its subcontractors to claim damages or loss of profit on the part of the Project that is omitted. Under emergency circumstances or other urgent conditions, it may be necessary for Chrysler to issue a Field Order prior to the issuance of a Bulletin. Upon receiving an emergency Field Order, Contractor must promptly commence the work and submit to Chrysler within 14 days a written preliminary statement or estimate of the additional cost or credit. The associated Bulletin will be issued and processed as stated above, including submission of detailed cost information and quotation.

Whenever Chrysler issues a Bulletin/Field Order which will result in a change of the cost of the Contract to Chrysler, Contractor must accurately complete and submit to Chrysler the forms Contractor Cost Breakdown Summary Sheet Form 84-806-1893, Contractor Cost Breakdown Detail Sheet Form 84-806-1892, Facilities and Materials Purchasing U.S.A. Labor Hourly Rate Computation Form 84-806-1890, Facilities and Materials Purchasing Canadian Labour Hourly Rate Computation Form 84-806-1891 and any required attachments, to document and substantiate the change in cost caused by the Bulletin or Field Order referenced. Reference Chrysler website address:

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<https://extranet.Chrysler.com/restricted/purchasing/terms/index.html> to obtain required forms. Contractor's failure to submit properly completed forms may result in rejection of request for payment. Contractor must include at least the following information with its firm quotation to Chrysler:

- Who: Name of supplier presenting the quotation.
- What: Definition of scope of work, including all major parameters of task to be performed. Include technical description, parameters, physical characteristics, and limitations. Describe alternate solutions offered as options.
- When: Timeframe in which supplier expects work to begin and to be completed.
- Where: Physical location where work is to be completed or installed. Include coordinate location within the plant, if applicable.
- Why: Describe reason for the work as performed.
- How Much: Quotation by supplier must include estimated cost to complete the work as defined by parameters supplied by Chrysler.

Contractor must as a minimum submit a separate cost-estimate breakdown, in accordance with the further requirements of this Section, for each of the following categories:

- Total labor (including hours, and cost of labor per hour, by classification).
- Material cost for each major component.
- Rental of equipment.
- Other major costs (specific to the job).

Contractor must obtain the same detailed information for each sub-supplier and include the same with Contractor's quotation to Chrysler. Should the Bulletin/Field Order statement of work change during performance of the described work, Contractor must submit a revised cost estimate to Chrysler to reflect the changed work.

**Premium or Overtime Work.** Contractor's submission must include a separate estimate of all charges covering extra premium and/or overtime work requested by Chrysler. The cost estimate will list each employee's trade classification, hourly rate and the expected premium or overtime hours worked. The cost estimate may include working supervisors, when required by the National Maintenance Agreement and local trade contracts, if such supervisors are continuously employed on the work. The cost of non-working supervision must not be included. Chrysler will only reimburse Contractor for the premium portion pay, applicable fringe benefits and taxes, and federal and state unemployment and insurance contributions. Chrysler will pay no overhead charges or profit for overtime or premium work performed pursuant to this Section.

# CHRYSLER'S GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION PROJECTS ON CHRYSLER PROPERTY

**Labor.** Contractor must include a statement of all labor required to complete the changed work, containing the estimated hours of each trade classification and the approved hourly rate. Working supervisors, when required by the National Maintenance Agreement and local trade contracts, may be included if they are continuously employed on the work, but non-working supervisors may be included only when the extra work requires it. Contractor will submit satisfactory proof to Chrysler or its representative of applicable hourly base rates, unemployment insurance contribution rates, taxes and fringe benefits.

**Materials.** Contractor's cost estimate must include a statement of all quantities of materials required and the unit cost for each item necessary to properly complete the changed work.

**Equipment and Tools.** Tools and equipment that cost at least \$2,000 new and which are used in direct support of changed work and are not covered by unit pricing, shall be leased at the lowest rental rate (hourly, daily, weekly or monthly) consistent with the length of time the tools or equipment will be used. Rental rates will include all maintenance and lubricants and may not exceed the latest edition of the rental rates and specifications guide published by the Associated Equipment Distributors ("AED"). Chrysler Value Analysis will negotiate a suitable rate for any Contractor-owned equipment to be used in the work.

**Overhead and Profit.** The standard approved rates for overhead and profit on materials, tools and equipment shall be negotiable, not to exceed 12.5% on Contractor's own work. Overhead and profit for labor are included on the Labor Hourly Rate Computation sheet. The standard approved rate for fees on a subcontractor's work shall be negotiable, not to exceed 7.5%, regardless of the number of tiers of subcontractors involved. These percentages, applied to the direct costs, represent the total allowed mark-up for overhead and profit. As used in this paragraph, the term "subcontractor" includes only those who have a direct contract with Contractor. It includes one who furnishes material worked to a special design according to the Drawings and Specifications, but does not include one who merely furnishes material not so worked.

If unit prices are stated in the Contract, the price to Chrysler of the changed work will be computed in accordance with the unit prices provided. Unit prices include Contractor's estimated costs as well as all overhead and profit. Unit prices approved by Chrysler will govern changes to the Project required by Drawings and Specifications. Notwithstanding the foregoing, if the original purchase order price for the Project is impacted by more than 30 % or \$100,000, Chrysler may

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disregard unit prices and negotiate the price. If unit prices are not stated in the Contract, the price to Chrysler of the changed work will be computed in accordance with either sub-Section (a) or sub-Section (b) below as directed by Chrysler:

(a) Upon CHRYSLER'S request, Contractor shall submit unit prices, determined in accordance with a fair and reasonable valuation made by Contractor and approved by Chrysler for the changed work. Computations shall be shown in sufficient detail to permit validation by Chrysler, and all information required by Chrysler to establish a fair valuation of the changed work must be promptly submitted by Contractor.

(b) The price to Chrysler for changed work performed by Contractor on an actual cost-plus-fee basis will be computed as the sum of the following: (i) the actual cost to Contractor or its subcontractors of all direct labor performed (including foremen employed continuously on the changed work, but not the salary, or any part thereof, of Contractor's superintendent(s)) and all materials furnished for and used in the changed work less all available cash, trade and other discounts; (ii) the rental cost to Contractor or its subcontractors for the use of equipment with an individual value in excess of \$2000, provided that the amount of the rental charge and the use of the equipment have been authorized in writing by Chrysler; (iii) any costs incurred and paid by Contractor or its subcontractors, which is properly allocable to the changed work, for royalties, permits and inspection fees; (iv) any premium paid by Contractor or its subcontractors for proper and necessary insurance which is properly allocable to the changed work and any payroll tax which is applicable and properly allocable to the changed work; and (v) a fee, either pre-negotiated or not in excess of 12.5 % of the sum of the costs determined solely in accordance with clauses (i), (ii) and (iii). This fee shall constitute full compensation to Contractor for any cost or expense that has not been enumerated as well as for overhead and profit. Subcontractors will receive that part of the fee that Contractor allots and pays to them.

If Chrysler directs Contractor to proceed with the changed work pending the submission of a unit price, Contractor will proceed on an actual cost-plus-fee basis, as provided in sub-Section (b) above. If the unit price is not acceptable to Chrysler, then, except as otherwise may be directed by Chrysler, Contractor shall continue and complete the changed work and the price to Chrysler will be computed in accordance with sub-Section (b) above.

Contractor shall keep and present, in the manner Chrysler directs, an accurate and detailed account of all costs together with all supporting documentation, including daily time sheets. The account and supporting documentation are subject to audit by Chrysler.

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## 24. Insurance

Chrysler will assume responsibility for maintaining fire and extended coverage insurance to cover the work performed and materials delivered to the job site which are to be included in the permanent construction, whether or not installed, except as otherwise provided in the next paragraph of this Section. Contractor shall not be liable for loss or damage to such work or materials caused by fire or other perils normally insured against by standard fire and extended coverage insurance policies, and the policy or policies maintained to cover such values will include (without specifically naming any party other than Chrysler in said policies) any interests of Contractor and its subcontractors in such work performed and material delivered. Chrysler waives any right of recovery it may have against Contractor and subcontractors for damage to or destruction of the above property and of other property of Chrysler located at the construction location due to fire or extended coverage peril. Loss, if any, to such work or materials shall be payable to Chrysler. Contractor shall be responsible for any and all loss of materials connected with the construction due to unexplainable disappearances, thefts or misappropriations of any kind or nature.

The foregoing provisions shall not operate to relieve Contractor and its subcontractors of responsibility for any loss or damage to their own or rented property or property of their employees of whatever kind or nature, nor to labor performed under the Contract incident to the repair, replacement, salvage, or restoration of such items, including, but not limited to, tools, equipment, forms, scaffolding, and temporary structures, including their contents. Chrysler will in no event be liable for any loss or damage to any of the aforementioned items, the work connected with the aforementioned items, or any other property of Contractor, its subcontractors or their employees or agents, which is not to be included in the permanent construction. Contractor and its subcontractors hereby waive any rights of recovery they may have against Chrysler for damage or destruction of their own property or property of their employees of whatever kind or nature.

Contractor and each of its subcontractors shall, during the continuance of the Project, including any additional work in connection therewith, maintain the following insurance coverages:

(a) workers' compensation, employers' liability insurance, and any insurance required by any employee benefit act or other statute applicable where the work is to be performed. All insurance must be in amounts sufficient, in the opinion of Chrysler, to protect Contractor and subcontractors from any liability for bodily injury, sickness or disease (including death resulting at any time from the injury, sickness or disease) of any of their employees, including any liability or damage which may arise by virtue of any statute or law in force or which may hereafter be enacted;

(b) comprehensive general liability and property damage insurance in any amount required by Chrysler, but not less than \$5,000,000 combined single



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limit, bodily injury and property damage, as protection against all risks of damage to or destruction of property, including loss of its use, or bodily injury, sickness, or disease (including death resulting at any time from the injury, sickness or disease) of persons, wherever located, resulting from any action, omission or operation under the Contract or in connection with the work; and

(c) comprehensive automobile liability insurance, including property damage, covering all motor vehicles used in connection with the work, in the minimum amount of \$5,000,000 per person, \$5,000,000 per occurrence for bodily injury (including death resulting at any time from the injury) and \$5,000,000 per occurrence for property damage.

Each insurance policy required by the Contract must be issued by a company authorized to do business under the laws of the state or province in which the work is to be performed. The policy must name Chrysler as an additional insured and contain endorsements stating that it is primary and not excess over or contributory with any other valid, applicable and collectable insurance in force for Chrysler (except that this sentence shall not apply to workers' compensation coverage). The policy must also contain appropriate endorsements extending the coverage to include the liability assumed by Contractor under the Contract. Each insurance policy procured must provide that Contractor may make no material change or cancellation in insurance or a subcontractor without thirty days prior written notice to Chrysler and Chrysler's written approval of the change or cancellation. Contractor must furnish evidence of the above-described insurance to Chrysler. Contractor's failure to comply with these insurance requirements does not relieve Contractor of its liability and obligations under this Section, and Chrysler's action or inaction with respect to insurance certificates does not act as a waiver of any Chrysler right described in this Section.

## **25. Assumption of Risk**

For purposes of this Section and the next Section, "Property Damage" means damage to or destruction of property and the loss of use thereof, and "Personal Injury" means bodily injury, sickness or disease, including death resulting at any time from the injury, sickness or disease.

Except as specifically provided with respect to damage of property in the first paragraph of Section 24, Contractor assumes all risk of Property Damage and of Personal Injury on or in connection with the Project, and of any claim resulting from or arising out of any action, omission or operation under the Contract or in connection with the Project. Contractor shall bear the risk of loss or damage to the Project until Chrysler accepts the completed Project. Contractor shall repair and replace at its own expense all such loss and damage, however caused, whether or not due to the fault of Contractor.

# CHRYSLER'S GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION PROJECTS ON CHRYSLER PROPERTY

## 26. Indemnity

Without limiting any other indemnity clause in this Contract, Contractor shall defend, indemnify and hold Chrysler, the Architect, the Resident Engineer and their respective agents harmless from any loss, cost, damage, liability, expense, claim, administrative or legal action, whether groundless or not, arising out of or in connection with any Personal Injury or any Property Damage resulting from or related to performance of the Contract, including any extra work assigned to Contractor in connection with the Project, based upon any act or omission, negligent or otherwise, of (a) Contractor or any of its employees, agents, or servants, (b) any subcontractor of Contractor or any employees, agents, or servants of the subcontractor, or (c) any other person or persons, including Chrysler, or any employees, agents or servants of Chrysler. This indemnification includes, but is not limited to the obligation of Contractor to defend, indemnify and hold Chrysler harmless from any claim for Property Damage or Personal Injury based upon or alleged to have arisen out of: (1) the sole active or passive negligence of Chrysler (except as prohibited by Michigan Compiled Laws Annotated Sec. 691.991), (2) the joint or concurrent active or passive negligence of Chrysler and Contractor, (3) the joint or concurrent active or passive negligence of Chrysler and any subcontractor of Contractor, (4) the joint or concurrent active or passive negligence of Chrysler and any other person(s), (5) the joint or concurrent active or passive negligence of Contractor and any other person(s), (6) the joint or concurrent active or passive negligence of any subcontractor of Contractor and any other person(s), (7) Chrysler's failure to provide a safe place to work, or (8) Chrysler's failure to take proper or reasonable safety precautions or exercise proper control with respect to the conduct of any inherently dangerous activity on or off its premises.

If the Project is to be performed in the State of Illinois or if Illinois law would apply to the Contract, the following indemnity paragraph is substituted for the immediately preceding paragraph: "Contractor must defend, indemnify, and hold Chrysler harmless from and against any loss, cost, damage, expense, claim, or legal action, whether groundless or not, arising out of the bodily injury, sickness, or disease (including death resulting at any time therefrom) which may be sustained or claimed by any person, and the damage or destruction of any property, including loss of its use, arising out of or related to the performance of any work in connection with this Contract, based upon any act or omission, negligent or otherwise, of (a) Contractor or any of its employees, agents, or servants, (b) any subcontractor of Contractor or any of its employees, agents, or servants, or (c) any other person or persons excluding agents, servants, and employees of Chrysler."

Contractor shall, at its own expense, defend against any claim of Property Damage or Personal Injury and any suit, action or proceeding which may be commenced relating to such claim, and Contractor shall pay any judgment which may

# **CHRYSLER'S GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION PROJECTS ON CHRYSLER PROPERTY**

be recovered in the suit, action or proceeding and all expenses, including but not limited to, costs, attorneys' fees, and settlement expenses which may be incurred in the suit, action or proceeding.

## **27. Timing**

Time is of the essence of the Contract. Contractor shall expeditiously complete the Project within the time limit(s) set forth in the Contract Documents. Contractor shall have included in its base bid all premium time and overtime necessary to complete the Project on time. If it becomes necessary for Contractor to work other than regular hours, or to hire additional employees, to complete the Project by the date previously committed to, Contractor shall give notice to Chrysler and work overtime, additional shifts, Sundays or holidays, or hire additional employees as required. This will be without additional cost to Chrysler.

Contractor shall, when requested by Chrysler in writing at any time, work its forces outside the normal workday or workweek. If the contract price is based on normal workday or workweek, Chrysler will reimburse Contractor for its out-of-pocket overtime and premium payments, taxes, and welfare payments required by legal or union regulations, but is not responsible for other additional costs or fees. For all overtime and premium time charges chargeable to Chrysler, Contractor shall prepare and submit to Chrysler daily a complete list of its and its subcontractors' employees showing the hours worked.

Contractor shall without cost to Chrysler cease work on any particular part of the Project and transfer its workers to and execute such other parts of the Project, as Chrysler may request, to enable others to hasten or properly carry on their work.

## **28. Use by Chrysler**

Chrysler may prior to its acceptance of the completed Project enter upon and use any portion of the Project without compensation to Contractor for such use, and such taking of possession and use shall not be deemed an acceptance of the portion of the Project so taken and used. Contractor shall permit Chrysler, to the extent practicable, to place and install equipment and machinery during the progress of, and prior to completion of, the Project.

## **29. Confidentiality**

Contractor, its subcontractors and their employees shall keep confidential and not disclose, without Chrysler's express, prior written permission, information regarding Chrysler's inventions, processes, systems, methods, trade secrets and other proprietary information, or the presence or former presence of Regulated Materials on, at, or under Chrysler's property, which Contractor, its subcontractors and their employees may acquire in performing the Contract or in

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disclosures by Chrysler, its employees and agents. The obligation of confidentiality shall terminate when such information becomes publicly known through no breach of the obligations under the Contract.

## **30. Data**

Chrysler shall have the right to reproduce, use, publish, dispose of, and disclose, during the term of the Contract and thereafter, without further obligation to Contractor or any third party, all electronic, written or printed material (including without limitation, instruction manual, operating manual, maintenance manual or specification), recording, pictorial reproduction, drawing, model, print, photograph and graphical representation, or work of a nature similar to any of the foregoing (collectively "Data"), submitted or delivered to Chrysler in the course of work under the Contract or any subcontract thereto or related to such work. For Data covered by copyright, Contractor must obtain for Chrysler a fully paid, royalty-free, non-exclusive and irrevocable license, which includes the right to sublicense, for the copyrighted material.

Contractor must require each subcontractor and each person supplying material to Contractor in connection with the Contract to agree to the terms of the preceding paragraph and to make them a written part of any order or contract the subcontractor or person supplying material may issue or grant pertaining to the work.

Chrysler may have additional rights to and in some Data under other provisions of the Contract.

## **31. Drawings**

All drawings (whether in hard copy, electronic or other form) for the Project prepared by or for Contractor and its subcontractors shall be submitted to Chrysler's authorized representative for approval and signing. Contractor shall check all drawings, including all measurements, materials, and other details shown thereon, to ensure that they conform with the Drawings and Specifications. With respect to those parts of the Project for which only a portion is completely drawn or detailed on the Drawings, all like work throughout like areas or locations must conform to the portion drawn or detailed on the Drawings unless expressly shown or noted otherwise. Contractor or its subcontractors, as applicable, shall revise and resubmit any drawing that is not approved. Contractor shall obtain acceptance of shop drawings for fire prevention, automatic sprinkler, fire walls and roofing systems from Factory Mutual System and the state rating bureau with jurisdiction over the Project before submitting such drawings to Chrysler's authorized representative.

Upon completion of the Project, Contractor shall furnish to Chrysler complete "as built" drawings in such number of copies as requested by Chrysler.

Title to original drawings (including shop drawings), blueprints, bills of material, plans and specifications prepared by or for Contractor, or furnished to or by Contractor

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in connection with the Project shall be and remain in Chrysler. Contractor shall promptly deliver the originals and all copies of the foregoing documents to Chrysler upon completion of the Project, except that Contractor shall retain copies thereof to the extent necessary to maintain a record of work performed by it.

## **32. Accounts and Audits**

Contractor shall keep full and detailed accounts of all labor, materials and costs relating to the Project to Chrysler's satisfaction. All books and records of Contractor pertaining to the Contract may be inspected and audited by Chrysler and its designated representatives at any time prior to three years after final payment is made by Chrysler under the Contract.

## **33. Suspension**

Chrysler may without cause at any time suspend the Project or any part thereof for such time as Chrysler may determine. Upon receipt of Chrysler's notice of suspension, Contractor shall stop work on and suspend shipment and deliveries of materials for the suspended part of the Project and shall immediately confer with Chrysler regarding ways to reduce Contractor's costs during the suspension. Chrysler will, as its sole obligation to Contractor arising from the suspension, make an equitable adjustment to the purchase order price for increases and decreases in Contractor's cost of performing the Contract which result from the suspension, provided, however, that no adjustment shall be required for any cost increases to the extent that performance of the Project is, was, or would have been suspended, delayed or interrupted by a cause for which Contractor is responsible.

## **34. Termination for Cause**

Chrysler may terminate the Contract if (i) Contractor fails: (a) to complete the Project with diligence and promptness, (b) to supply sufficient properly skilled workers or supervision, (c) to supply materials, tools, equipment, facilities, supplies and services of the proper quantity and quality in a timely manner, (d) to make prompt payments to subcontractors and suppliers, (e) to adhere to all applicable laws, ordinances, regulations, rules (including Chrysler's rules for protection of workers, property and environment), or (f) to perform any other obligation of Contractor under the Contract; and such failure is not remedied by Contractor within three days after receipt of written notice from Chrysler informing of such failure, (ii) a petition is filed by or against Contractor in any proceedings under the bankruptcy act, or (iii) Contractor becomes insolvent, generally fails to pay its debts when due, makes an assignment of assets to its creditors, or has a trustee appointed for it.

When any of the above reasons exist, Chrysler may without prejudice to any other remedies it may have under the Contract, in law or in equity, terminate employment of Contractor by written notice to Contractor and the surety, if any, and

## **CHRYSLER'S GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION PROJECTS ON CHRYSLER PROPERTY**

may, subject to any prior right of the surety, if any, take possession of the job site and all materials, supplies, equipment, tools, and construction equipment and machinery thereon owned by Contractor and finish the Project by whatever method Chrysler may deem reasonable and expedient. If Chrysler elects to terminate the Contract, Contractor shall promptly remove from the job site all materials, tools, equipment, facilities and supplies belonging to third parties. Contractor shall follow any instructions contained in Chrysler's termination notice for preserving the work in progress and protecting materials and equipment on the job site or in transit thereto. Contractor shall not be entitled to receive any further payment until completion of the Project. If the unpaid balance of the purchase order price exceeds the cost to Chrysler of finishing the Project, the excess will be paid to Contractor. If the cost to Chrysler of finishing the Project exceeds the unpaid balance of the purchase order price, Contractor shall pay Chrysler the difference. Chrysler will certify Chrysler's cost of completing the work and the certificate shall be final and binding upon Contractor and Chrysler. Chrysler will return to Contractor at Contractor's expense all unexpended materials, tools, equipment, facilities and supplies furnished by Contractor for the Project following completion of the Project.

### **35. Termination without Cause**

Chrysler may terminate the Contract at any time without cause by written notice to Contractor. Upon receipt of Chrysler's notice of termination, Contractor shall (a) terminate all work under the Contract on the date specified in the notice, (b) terminate all orders and subcontracts which may be terminated without cost, (c) terminate and settle, subject to Chrysler's approval, other orders and subcontracts where the cost of settlement is less than the cost which would be incurred were the order or subcontract completed, (d) transfer, as directed by Chrysler, any material, work in progress, supplies, equipment, machinery or tools acquired by Contractor for performance of the Contract for which Contractor is reimbursed, and all drawings, blueprints, plans, and specifications used or to be used in connection with the Project, and (e) follow any instructions given by Chrysler for preserving the work in progress and protecting materials and equipment on the job site or in transit thereto.

Upon Contractor's compliance with its obligations under clauses (a) through (e) above, Chrysler will, in complete discharge of all obligations of Chrysler under the Contract, pay Contractor for the following: the portion of the Project completed by Contractor and its subcontractors up to the date of termination, the cost to Contractor of material and equipment to be incorporated in the Project which has been delivered to the job site up to the date of termination, the cost to Contractor of (i) material and equipment to be incorporated in the Project for which bona fide, irrevocable orders have been placed by Contractor prior to the date of termination and

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(ii) settling orders and subcontracts pursuant to clause (c) above, and the cost to Contractor of complying with Chrysler's instruction under clause (e) above. The total amount payable to Contractor under this Section shall in no event exceed the purchase order price. Any cost or expense paid by Chrysler is subject to audit by Chrysler. Chrysler will not pay any anticipated profit on portions of the Project not completed.

## **36. Glass**

Contractor shall be responsible for all breakage or other damage to glass installed at the job site until buildings are turned over to Chrysler. Contractor shall have all glass cleaned by professional window washers immediately prior to turning buildings over to Chrysler. Contractor shall replace any damaged glass at its own expense.

## **37. Independent Contractor**

Contractor's relationship to Chrysler is that of an independent contractor. Nothing in the Contract shall be deemed to make Contractor an agent, employee, representative, partner or joint venturer of Chrysler or to give Contractor authority to assume or create an obligation on behalf of, or in the name of, Chrysler.

## **38. Notices**

Each notice required to be given to Chrysler by the Contract must be in writing, addressed to Chrysler Group LLC, 1000 Chrysler Drive, Auburn Hills, Michigan 48326-2766, and directed to General Counsel, CIMS 485-14-96 in the case of a legal notice or to Tooling, Equipment and Construction Purchasing, CIMS 484-00-02 in the case of any other notice, unless a different department is specified in the Contract for receipt of notice, in which case the notice shall be directed to the that department. In each case a copy of the notice shall be given to Chrysler's designated representative identified in the purchase order. Notices to either party hereunder must be sent by (a) certified mail, return receipt requested, (b) facsimile, with a confirmation copy dispatched promptly by certified mail, return receipt requested, or (c) by nationally recognized courier service. A notice takes effect upon the earliest of the notified party receiving the notice or four days after the notice is sent.

Each payment required to be given to Chrysler by the Contract must be sent to:

Chrysler Group LLC  
Corporate Accounts Payable  
P.O. Box 537927  
Livonia, Michigan 48153-7927

# CHRYSLER'S GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION PROJECTS ON CHRYSLER PROPERTY

## **39. No Waiver**

No term or condition of the Contract shall be deemed waived, and no breach consented to, by Chrysler unless such waiver or consent is in a writing signed by an authorized representative of Chrysler. No waiver of any right or consent to any breach by Chrysler shall constitute a waiver of any other right or consent to any later or other breach.

## **40. Survival**

Contractor's obligations under Sections 7, 16, 17, 19, 25, 28, 29, 30, 31, 33, 34, and 41, as well as Contractor's obligations under this Contract, to indemnify Chrysler shall survive completion of the Project and termination of the Contract.

## **41. Miscellaneous**

The Contract sets forth the entire agreement between Chrysler and Contractor and supersedes any prior negotiation, understanding, representation or agreement between them with respect to its subject matter.

The Contract shall be construed and interpreted in accordance with the laws of the State of Michigan without regard to its conflicts of law provisions. Jurisdiction and venue of any action brought by either party are solely in the state or federal courts within the federal Eastern District of Michigan. No agreement or understanding modifying the terms and conditions of the Contract will be binding upon Chrysler unless in writing and signed by Chrysler.

Any provision required to be included in the Contract by federal, state or local laws, ordinances, rules or regulations shall be deemed to be incorporated herein.



# CHRYSLER'S GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION PROJECTS ON CHRYSLER PROPERTY

## APPENDIX A to General Terms and Conditions for Construction Projects on Chrysler Property-- Rules and Requirements

Contractor, its employees, agents, subcontractors and their employees and agents are subject to, and must at all times adhere to and comply with Chrysler's rules and requirements for the protection of Chrysler's employees, plant, materials, equipment and environment, including, but not limited to, the following:

1. Rules contained in the Chrysler/UAW "Safety and Health Requirements for Contractors" Manual and any revisions, updates or replacements thereto which may be issued by Chrysler from time to time.
2. The "Safety and Engineering Practices" set forth in the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America.
3. Chrysler's Environmental Technical Instruction (ETI) 103 unless compliance is waived in writing by Chrysler's Environmental Toxicologist. Chrysler's Environmental Toxicologist must be notified in writing if use is made of any substances identified in ETI-102, including its appendices.
4. Chrysler's smoking regulations which permit smoking only in designated areas.

Contractor must also comply with and adhere to the following conditions and requirements:

- A. Contractor must take all proper precautions to protect the job site, Chrysler's and adjoining property, including any work, building material, equipment, temporary field office, storage shed, and any other property, both public and private, from injury and, at its expense, repair any damage to property without delay. Care must be exercised to protect all trees, including their roots.
- B. Contractor must provide its employees with approved eye protection, which they must wear at all times where required in Chrysler's facilities. The employees must wear appropriate protective headgear and other personal protective equipment while performing work on the job site.
- C. Electrical machinery or equipment used at the job site must be equipped with

## **CHRYSLER'S GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION PROJECTS ON CHRYSLER PROPERTY**

suitable electrical receptacles and connectors. Exposed wiring connections are prohibited.

D. Connections may be made to existing building structures only by means of clamps. Drilling, field welding or burning connections to a building's structural steel is not permitted without Chrysler's prior written consent.

E. Contractor must take all necessary precautions to guard against and eliminate fire hazards. The location of the nearest Chrysler and public fire alarm box and the phone number of the local fire department must be conspicuously posted by Contractor throughout the field offices and in the building structure adjacent to its work.

F. Contractor's superintendent must inspect the entire Project at least once each week to ensure that Contractor adheres to the conditions and requirements of this Appendix.

G. Contractor may not permit open fires and Contractor's employees may not use gasoline, kerosene, or other highly flammable materials to start fires.

H. Contractor may not weld, flame cut, or use flame, arcs, or sparking devices without adequate protection and shielding, without a Chrysler welding permit and the prior written permission of Chrysler. Any combustible or flammable material must be removed from the immediate working area. If removal is impossible, any flammable or combustible material must be protected with a fire retardant blanket or suitable non-combustible shield to prevent spark, flame, or hot metal from reaching the flammable or combustible material. Contractor must provide all necessary personnel and fire fighting equipment to effectively control incipient fires resulting from welding, flame cutting, or other operations involving the use of flame, arcs, or sparking devices.

I. Not more than a one-day supply of flammable liquid (such as oil, gasoline, paint or paint solvent) may be brought into any building. Any flammable liquid with a flash point of 110 degrees F. or below, which must be brought into any building, must be confined in Underwriters' Laboratories (UL) and Factory Mutual Research Corporation (FMRC) approved labeled safety cans. The bulk supply of any flammable liquid must be located at least 75 feet from buildings and from building materials stored at the job site. Spigots on drums containing flammable liquid are prohibited on the job site. Drums being dispensed from on the job site must be equipped with FMRC-approved drum pumps. If a liquid with a flash point below 110 degrees F. is being dispensed, the drum must be properly grounded, bonded to the safety can and have an FMRC-approved drum pump equipped with a safety bung.

J. Only a reasonable working supply of flammable building material may be located

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inside, or on the roof, of any building. All roofing materials (including roof insulation) must be stored outside of all buildings, properly protected, and located a safe distance from all buildings to reduce fire exposure. No tar melting kettle or tar heating device of any kind is permitted inside, on the roof or within 50 feet of any building. If Contractor cannot comply with these conditions and accomplish the work, then Contractor must first obtain from Chrysler a special written deviation permit. A deviation request will only be approved in exceptional circumstances.

K. Tarpaulins used on the Project must be flameproof and secured in place against damage or flapping from the wind.

L. Oil soaked rags, papers, and other combustible materials must be removed from buildings at the close of each day's work, or more often if necessary, and placed in metal containers with self-closing lids.

M. No gasoline, benzene, similar combustible materials, or regulated or hazardous substances may be poured into any sewer, manhole, or trap. Contractor must dispose of those materials, together with all flammable or waste material subject to spontaneous combustion in compliance with law and in a manner approved by Chrysler. Contractor must obtain Chrysler's written permission before bringing any of these materials to the job site and must make appropriate arrangements for their storage and disposal.

N. Contractor must inspect any temporary heating facility to ensure that it is in a safe operating condition at all times. No liquid fuel may be used for starting a solid-fuel fire. Wood or other debris may not be burned in coke fired salamanders. Oil-fired stoves must be approved by the Underwriters' Laboratories and have safety combustion controls and integral fuel tanks, which must not exceed 15 gallons capacity for each stove. Heating devices must be approved by Chrysler before use.

O. Contractor must, at its expense, when required by Chrysler, ensure that at least one person, thoroughly familiar with fire protection and prevention and acceptable to Chrysler, is on duty at all hours that Contractor's employees are working, patrols the job site, and has authority to take immediate remedial action to eliminate unnecessary fire hazards.

P. Contractor's and its subcontractors' employees anywhere on the job site must assist in extinguishing any fires.

Q. Shanties made of combustible materials must be placed at least 75 feet from any

## **CHRYSLER'S GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION PROJECTS ON CHRYSLER PROPERTY**

building on the job site. Totally incombustible shanties may, subject to Chrysler's prior written permission, be located inside structures. Flammable portions of construction shanties must be painted inside and outside with "ALBI" fire retardant paint or other fire-retardant paint approved by Chrysler.

R. Any heater or stove in field offices or storage sheds must have fire resistant material underneath and at the sides between the heater or stove and partitions and walls. A pipe sleeve and fire retardant covering must be used where the stove pipe runs through a wall or roof.

S. Automobiles may be parked within any building, whether under construction or completed, only when required by the work in progress and the operator responsible for the vehicle is present.

T. Contractor must require, and will be responsible for, that its subcontractors comply with and adhere to the items A through S above, with the exception of items F and O.