



CONSTRUCTION PROJECTS ON BEHR PROPERTY GENERAL TERMS AND CONDITIONS

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
1. Definitions	3
2. Survey and Legal Description	4
3. Examination and Investigation by Contractor	5
4. Performance Bond	5
5. Bids and Prices	5
6. Contractor's Obligations	6
7. Role of Architect	8
8. Job Site	8
9. Soil Boring	9
10. Surface Water and Erosion Control	10
11. Regulated Materials	10
12. Soil and Fill Materials	11
13. Materials and Equipment	11
14. Reporting, Inspection and Testing	12
15. Rental of Contractor-Owned Equipment	12
16. Warranties	13
17. Safety	14
18. Fire Protection	16
19. Subcontractors	17
20. Payment	18
21. Project Changes and Price Adjustments	19
22. Insurance	23
23. Assumption of Risk	23
24. Indemnity	25
25. Timing	26
26. Use by Behr	27
27. Confidentiality	27
28. Data	27
29. Drawings	28

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page 1 of 36

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30. Accounts and Audits	28
31. Suspension	28
32. Termination for Cause	29
33. Termination without Cause	29
34. Glass	30
35. Independent Contractor	31
36. Notices	31
37. No Waiver	31
38. Survival	32
39. Miscellaneous	32
Appendix A	33

Behr Management System

BMS 02250383 V1

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Refer to BMS for current revision level

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page 2 of 36

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CONSTRUCTION PROJECTS ON BEHR PROPERTY GENERAL TERMS AND CONDITIONS

1. Definitions

“Architect” means the architect employed by Behr to oversee performance of the work covered by the Contract. If no architect is employed by Behr, Behr’s Project Engineer or other authorized representative specifically designated by Behr may perform the duties ascribed to the Architect in the Contract.

“Bulletin” means a form used by Behr 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 Behr formed by (1) these general terms and conditions (including the attached Appendix A), (2) the terms of Behr’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 Behr’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.

“Behr” means and includes Behr America, Inc., Behr Dayton Thermal Products, LLC, Behr Climate Systems, Inc., Behr Heat Transfer Systems, Inc. and Behr Service America, L.P., depending on the name in which the purchase order is issued.

“Drawings” means the drawings for the Project prepared by or for Behr and signed by Behr’s authorized representative, and includes any subsequent modification or substitution approved and signed by Behr’s authorized representative.

“Environmental Laws” mean 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

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BMS 02250383 V1

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page 3 of 36

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

“Regulated Materials” means all chemicals, pollutants contaminants, contaminated material, waste 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; (4) insecticides, fungicides, or rodenticides; and (5) gasoline or any other petroleum product or byproduct, asbestos, polychlorinated biphenyls, and urea formaldehyde.

“Modification” means (1) a change to the Contract authorized by Behr in a Field Order, (2) a change to the Contract authorized or approved in writing by Behr in accordance with Section 21 below, or (3) a written amendment to the Contract signed by both parties.

“Project” means the construction and services required to be provided to Behr 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.

“Project Engineer” means the person authorized and designated by Behr 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 Behr.

2. Survey and Legal Description

If Behr deems it necessary, Behr 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.

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For internal use only
page 4 of 36

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3. Examination and Investigation by Contractor

Contractor acknowledges and represents to Behr 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 obligation under this Section, any error or oversight on its part, or any interference by Behr's or other contractor's reasonable activities.

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

4. Performance Bond

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

5. 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 Behr or its

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page 5 of 36

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representative requests Contractor in writing to work additional premium or overtime at Behr's expense, Contractor will work such additional hours or shifts as are required to comply with Behr's request. Contractor shall submit to Behr any alternate price, unit price and separate price that Behr may require. All prices quoted shall be firm and with no provision for escalation, unless otherwise specified in writing when the Contractor 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 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 Behr 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 alternatives specified, Contractor shall state in its bid proposals 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, Behr may select any specified make or type without incurring a change in the price. In any event, whenever Behr has a choice of alternate materials, the final selection is Behr's.

Behr 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.

6. 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 Behr harmless from liability for any such taxes, contributions and premiums.

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page 6 of 36

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Contractor shall promptly secure and pay for all permits, licenses and inspections and, after providing notice to the Project 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 Behr 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 Behr and to all subcontractors and suppliers of labor and materials for the 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 Behr 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 Behr 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 Behr, including participating in meetings called by Behr's representatives and furnishing Behr 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 Behr 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 Behr 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 Behr to have full and free use and enjoyment of the Project during construction and thereafter.

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page 7 of 36

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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 Project 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 Behr harmless from and against 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 Behr resulting from or in connections with any failure to fully comply with the provisions of this and the immediately preceding paragraph of this Section.

7. Role of Architect

The Architect will assist Behr in verifying that 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.

Behr may assign to the Architect the responsibility of supervising the work, including providing assistance and directions to the 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 Behr or the Architect for any cost or damage arising from the Contractor acting on the verbal instruction of the Architect or Behr.

8. 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 Behr may indicate from time to time. Contractor shall, at

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page 8 of 36

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no cost to Behr, move, as directed by Behr, 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 Behr 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 Behr, Behr may do so at Contractor's expense.

Contractor shall afford Behr and Behr'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.

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 Behr's premises without specific, prior written approval of Behr.

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

9. 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 Facility Group.

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(b) Contractor must ensure that a filing 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 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.

10. 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 Facility Group. Contractor is responsible for following all conditions specified in the approved wetland permit while performing any work that may affect 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 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 Behr's approval of the restoration.

11. Regulated Materials

Contractor must be observant and immediately report to Facility Group and the Project Engineer any Regulated Material encountered or discovered during excavation, including without limitations drums or drum fragments, or soil that has an odor or unnatural color. Work relating to the Regulated Material must cease until Contractor has consulted with the Project Engineer, and the Project 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 Project Engineer.

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page 10 of 36

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Behr will make any notifications required by law, regulation, rule, or ordinance relating to Regulated Material encountered or discovered during excavation.

To follow ISO 14001 requirements Suppliers/Contractors who provide or bring potentially hazardous materials on site shall provide Material safety data Sheets (MSDS) as applicable. All materials brought on site are to be labeled in accordance with Hazardous Communication Requirement.

MSDS shall be directed to the Location Environmental Management Representative designee for review and record retention.

12. Soil and Fill Materials

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

Contractor must utilize one of the following procedures to bring any soil or fill material onto Behr 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 Behr with a written certification of the testing results in a form acceptable to Behr.

Contractor hereby indemnifies, defends and holds Behr 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 Behr resulting from or in connection with any Regulated Material that Contractor brings onto Behr property.

13. Materials and Equipment

Contractor and its subcontractors shall purchase material and equipment only from sources approved by Behr and will promptly furnish to Behr a list of manufacturers and suppliers from whom Contractor and its subcontractors propose to purchase material and equipment and, additionally upon Behr's request, (a) priced

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page 11 of 36

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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. Behr's approval or the 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 Behr 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 Behr-supplied material from the time of its delivery to Contractor and will return any surplus of Behr-supplied material to Behr. No materials may be removed from the job site without Behr'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 Behr, Contractor or subcontractor.

14. 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 Behr or its designated representative. Such inspection and approval, or the lack thereof, will not relieve Contractor of any of 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 Behr's request, all work performed at the job site or elsewhere without opportunity for inspection by Behr or its designated representative, whether by Contractor or its subcontractor, must be uncovered for inspection at Contractor's expense. Contractor shall keep Behr continually informed of the status of the Project, including any work in transit, in fabricating shops or elsewhere.

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page 12 of 36

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Contractor will be responsible for all delays resulting from failure to provide work in the proper manner and time. Contractor shall immediately report to Behr 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 Behr's designated representative if so requested by Behr, 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 Behr employees or others.

Performance testing shall be performed by Contractor as required by the Contract Documents before acceptance of the Project by Behr. All tests must be performed under the supervision and direction of Behr's designated representative. Contractor shall provide all required materials, labor and apparatus necessary to perform the test or, if so directed by Behr's representative, engage an approved testing laboratory to perform the test. Contractor shall deliver to Behr all manuals, drawings and written instructions regarding equipment upon Behr'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 Behr 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 Behr's representative demonstrates that the requirements of the Specifications have been fulfilled, the cost of that test will be paid by Behr.

15. Rental of Contractor-Owned Equipment

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

16. Warranties

Contractor represents and warrants that all materials and equipment furnished under the Contract will be new (unless otherwise expressly permitted by the Contract),

Behr Management System

BMS 02250383 V1

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page 13 of 36

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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 Behr, may be considered defective.

At any time prior to completion of the Project, Contractor will within 24 hours of receiving written request from Behr 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 Behr-supplied materials, if any, will be borne by Behr. 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 Behr, before final payment, a written guarantee, for a term of two years from the date Behr 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 Behr 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 Behr and run concurrently with Contractor's guarantee. Contractor shall repair or remove and replace, at Behr's convenience, and at no cost to Behr, all work or materials which Behr reasonably deems to be defective, at any time within two years following the date of final acceptance of the Project by Behr, 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 Behr's benefit and pass on to Behr all warranties and guarantees received from manufacturers and suppliers.

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

Behr Management System

BMS 02250383 V1

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Refer to BMS for current revision level

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page 14 of 36

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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 herein, 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 Project 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 Behr 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 Behr 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 Behr 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 systems, 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.

Behr Management System

BMS 02250383 V1

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Refer to BMS for current revision level

For internal use only
page 15 of 36

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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 Behr Security and the Project Engineer.

Contractor shall: (a) after giving notice to Behr, 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 provisions of Appendix A hereto and all other safety regulations of Behr, 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 Behr harmless from and against any suits, 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 Behr 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.

18. Fire Protection

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

Behr Management System

BMS 02250383 V1

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Refer to BMS for current revision level

For internal use only
page 16 of 36

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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 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.

19. Subcontractors

Contractor shall not subcontract under or assign the Contract or any part thereof without prior express written approval by Behr. In any subcontracting hereunder, Contractor shall by written agreement require each subcontractor to assume toward Contractor, to the extent of subcontractor's work on the Project, all obligations and responsibilities which Contractor, by the Contract, assumes toward Behr. Each subcontractor shall preserve and protect the rights of Behr 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.

Behr Management System

BMS 02250383 V1

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Refer to BMS for current revision level

For internal use only
page 17 of 36

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Notwithstanding any approval or consent given by Behr, Contractor is responsible to Behr 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 Behr 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 Behr arising from or in connection with the actions, omissions or negligence 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. Nothing in the Contract shall be deemed to create a direct contractual relationship between Behr and any subcontractor of Contractor.

20. Payment

Behr 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 Behr, 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 Behr 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, Behr may retain 10 percent of the amount of the invoice until final completion and acceptance of the Project by Behr.

Contractor shall send a hard copy request for payment to the Project Engineer. Printed requests for payment must be accompanied by sworn statements, in a form acceptable to Behr, 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 Behr may request. Contractor's sworn statement must include any other information that is customary or prescribed by any lien law or

Behr Management System

BMS 02250383 V1

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For internal use only
page 18 of 36

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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 Behr 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 Behr 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 Behr.

Behr may retain out of any payments due Contractor an amount sufficient to indemnify Behr 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 Behr on account of such claim or lien will be paid to Contractor and, further provided, that if Contractor furnishes to Behr an indemnity bond issued by a bonding company or other surety approved by Behr in an amount, and in all other respects, satisfactory to Behr and indemnifying Behr against such claim or lien, the amount retained by Behr on account of such claim or lien will be paid to Contractor.

Final payments of all moneys due but not previously paid to Contractor will be made in accordance with the Contract after Behr accepts in writing Contractor's completed performance of the Project and Contractor furnishes Behr evidence satisfactory to Behr that all liens, claims, and suits chargeable to Behr or against Behr'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.

21. Project Changes and Price Adjustments

Behr may at any time, without voiding the Contract, propose or order changes to the Project, the Drawings and the Specifications, including, but not limited 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 Behr's proposed change (which may be in the form of a Bulletin or order), submit to Behr 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

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BMS 02250383 V1

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page 19 of 36

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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 Behr's written notice or order or within such further time as Behr may allow in writing. However, if in the opinion of Behr or the Architect, a credit is due Behr, Behr 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 Behr 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 Behr) will be considered unless written notice of the claim is given to Behr 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 Behr in a Field Order. The provisions of the Contract shall apply to all changed work ordered by Behr with the same effect as if originally embodied in the Contract unless otherwise specifically agreed to by Behr in writing. Omission by Behr 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 Behr 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 Behr 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 Behr issues a Bulletin/Field Order which will result in a change of the cost of the Contract to Behr, Contractor must accurately complete and submit to Behr a cost breakdown summary, a detailed cost breakdown, and a labor hourly rate computation, to document and substantiate the change in cost caused by the Bulletin or Field Order referenced. Contractor's failure to submit properly this required information may result in rejection of request for payment. Contractor must include at least the following information with its firm quotation to Behr:

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

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BMS 02250383 V1

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 page 20 of 36

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- 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 Behr
- 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 Behr. Should the Bulletin/Field Order statement of work change during performance of the described work, Contractor must submit a revised cost estimate to Behr 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 Behr. 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 supervisors must not be included. Behr will only reimburse Contractor for the premium portion pay, applicable fringe benefits and taxes, and federal and state unemployment and insurance contributions. Behr will pay no overhead charges or profit for overtime or premium work performed pursuant to this Section.

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 Behr or its representative of applicable hourly base rates, unemployment insurance contribution rates, taxes and fringe benefits.

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BMS 02250383 V1

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Refer to BMS for current revision level

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page 21 of 36

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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: Equipment and tools 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 equipment or tools 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"). Behr 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 in the labor hourly rate computation. 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 contact 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 o worked.

If unit prices are stated in the Contract, the price to Behr of the changed work will be computed in accordance with the unit prices provided. Unit prices include Contractor's estimated costs and also all overhead and profit. Unit prices approved by Behr 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, Behr may disregard unit price and negotiate the price. If unit prices are not stated in the Contract, the price to Behr of the changed work will be computed in accordance with either sub-Section (a) or sub-Section (b) below as directed by Behr:

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

Behr Management System

BMS 02250383 V1

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page 22 of 36

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(b) The price to Behr 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 \$2,000, provided that the amount of the rental charge and the use of the equipment have been authorized in writing by Behr; (iii) any cost 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 and also for overhead and profit. Subcontractors will receive that part of the fee that Contractor allots and pays to them.

If Behr 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 Behr, then, except as otherwise may be directed by Behr, Contractor shall continue and complete the changed work and the price to Behr will be computed in accordance with sub-Section (b) above.

Contractor shall keep and present, in the manner Behr 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 Behr.

22. Insurance

Behr 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 Behr in said policies) any interests of Contractor and its subcontractors in such work performed and material delivered. Behr waives any right

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page 23 of 36

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4500 Leeds Avenue
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Behr Dayton Thermal Products LLC
1600 Webster Street
Dayton, OH 45404
Tel: (937) 369-2900



of recovery it may have against Contractor and subcontractors for damage to or destruction of the above property and of other property of Behr located at the construction location due to fire or extended coverage peril. Loss, if any, to such work or materials shall be payable to Behr. 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 provision 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 repair, replacement, salvage, or restoration of such items, including, but not limited to, tools, equipment, forms, scaffolding, and temporary structures, including their contents. Behr will in no event be liable for any loss or damage to any 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 Behr 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 coverage:

(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 Behr, 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 Behr, but not less than \$5,000,000 combined single, 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

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BMS 02250383 V1

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page 24 of 36

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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 in which the work is to be performed. The policy must name Behr 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 Behr (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 Behr and Behr's written approval of the change or cancellation. Contractor must furnish evidence of the above-described insurance to Behr. Contractor's failure to comply with these insurance requirements does not relieve Contractor of its liability and obligations under this Section, and Behr's action or inaction with respect to insurance certificates does not act as a waiver of any Behr right described in this Section.

23. 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 Behr 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.

24. Indemnity

Without limiting any other indemnity clause in this Contract, Contractor shall defend, indemnify and hold Behr, the Architect, the Project 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

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BMS 02250383 V1

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page 25 of 36

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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 acts 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 Behr, or any employees, agents or servants of Behr. This indemnification includes, but is not limited to, the obligation of Contractor to defend, indemnify, and hold Behr 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 Behr (except as prohibited by Michigan Compiled Laws Annotated Sec. 691.991), (2) the joint or concurrent active or passive negligence of Behr and Contractor, (3) the joint or concurrent active or passive negligence of Behr and any subcontractor of Contractor, (4) the joint or concurrent active or passive negligence of Behr 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) Behr's failure to provide a safe place to work, or (8) Behr'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.

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 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.

25. 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 Behr and work overtime, additional shifts, Sundays or holidays, or hire additional employees as required. This will be without additional cost to Behr.

Contractor shall, when requested by Behr 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, Behr will reimburse Contractor for its out-of-pocket overtime

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page 26 of 36

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and premium payments, taxes, and welfare payments required by legal or union regulations, but it is not responsible for other additional costs or fees. For all overtime and premium time charges chargeable to Behr, Contractor shall prepare and submit to Behr daily a complete list of its and its subcontractors' employees showing the hours worked.

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

26. Use by Behr

Behr 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 Behr, to the extent practicable, to place and install equipment and machinery during the progress of, and prior to completion of, the Project.

27. Confidentiality

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

28. Data

Behr 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 Behr 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 Behr a fully paid, royalty-free, non-exclusive and irrevocable license, which includes the right to sublicense, for the copyrighted material.

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BMS 02250383 V1

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page 27 of 36

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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.

Behr may have additional rights to an in some Data under other provisions of the Contract.

29. 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 Behr'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 to 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 Behr's authorized representative.

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

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 in connection with the Project shall be and remain in Behr. Contractor shall promptly deliver the originals and all copies of the foregoing documents to Behr 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.

30. Accounts and Audits

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

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page 28 of 36

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31. Suspension

Behr may without cause at any time suspend the Project or any part thereof for such time as Behr may determine. Upon receipt of Behr'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 Behr regarding ways to reduce Contractor's costs during suspension. Behr 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.

32. Termination for Cause

Behr 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 Behr'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 Behr 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, Behr 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 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 Behr may deem reasonable and expedient. If Behr 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 Behr'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

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page 29 of 36

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receive any further payment until completion of the Project. If the unpaid balance of the purchase order price exceeds the cost to Behr of finishing the Project, the excess will be paid to Contractor. If the cost to Behr of finishing the Project exceeds the unpaid balance of the purchase order piece, Contractor shall pay Behr the difference. Behr will certify Behr's cost of completing the work and the certificate shall be final and binding upon Contractor and Behr. Behr 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.

33. Termination without Cause

Behr may terminate the Contract at any time without cause by written notice to Contractor. Upon receipt of Behr'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 Behr'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 Behr, any material, work in progress, suppliers, 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 Behr 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, Behr will, in complete discharge of all obligations of Behr 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 (ii) settling orders and subcontractors pursuant to the clause (c) above, and the cost to Contractor of complying with Behr'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 Behr is subject to audit by Behr. Behr will not pay any anticipated profit on portions of the Project not completed.

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34. Glass

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

35. Independent Contractor

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

36. Notices

Each notice required to be given to Behr by the Contract must be in writing, addressed to Behr America, Inc., 2700 Daley Drive, Troy, MI 48083, and directed to the legal department in the case of a legal notice or to [Tooling, Equipment and Construction Purchasing] 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 that department. In each case a copy of the notice shall be given to Behr’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 made to Behr by the Contract must be sent to:



37. No Waiver

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

38. Survival

Contractor's obligation under Sections 6, 15, 16, 18, 23, 26, 27, 28, 29, 31, 32, and 39, and also Contractor's obligation under this Contract, to indemnify Behr shall survive Completion of the Project and termination of the Contract.

39. Miscellaneous

The Contract sets forth the entire agreement between Behr 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 Behr unless in writing and signed by Behr.

If any provision of the Contract or the application thereof to any person or circumstance is held invalid or unenforceable to any extent, the remainder of this Contract and the application of that provision to other persons or circumstances are not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

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

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page 32 of 36

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Appendix A to Construction Projects on Behr Property General Terms and Conditions

– 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 Behr's rules and requirements for the protection of Behr's employees, plant, materials, equipment and environment, including, but not limited to, the following:

1. Rules contained in the Behr/IUE 758/775 "Safety and Health Requirements for Contractors" Manual and any revisions, updates or replacements thereto which may be issued by Behr 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. The "Safety Orientation Form EEFMO1100".
4. Behr's smoking regulation which permits 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, Behr'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 Behr'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 suitable electrical receptacles and connectors. Exposed wiring connections are prohibited.

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page 33 of 36

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- D. No gasoline driven construction machinery or equipment is permitted within any building on Behr's property.
- E. Connections may be made to existing building structures only by means of clamps. Drilling, field welding or burning connections to buildings structural steel is not permitted without Behr's prior written consent.
- F. Contractor must take all necessary precautions to guard against and eliminate fire hazards. The location of the nearest Behr 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.
- G. 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.
- H. Contractor may not permit open fires and Contractor's employees may not use gasoline, kerosene, or other highly flammable materials to start fires.
- I. Contractor may not weld, flame cut, or use flame, arcs, or sparking devices without adequate protection and shielding, without a Behr welding permit and the prior written permission of Behr. 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 combusting 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.
- J. 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

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page 34 of 36

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the safety can and have an FMRC-approved drum pump equipped with a safety bung.

K. Only a reasonable working supply of flammable building material may be located 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 Behr a special written deviation permit. A deviation request will only be approved in exceptional circumstances.

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

M. 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 container with self-closing lids.

N. 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 Behr. Contractor must obtain Behr's written permission before bringing any of these materials to the job site and must make appropriate arrangements for their storage and disposal.

O. 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 Behr before use.

P. Contractor must, at its expense, when required by Behr, ensure that at least one person, thoroughly familiar with fire protection and prevention and acceptable to Behr, 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.

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page 35 of 36

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Tel: (937) 369-2900



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

R. Shanties made of combustible materials be placed at least 75 feet from any building on the job site. Totally incombustible shanties may, subject to Behr'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 Behr.

S. 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.

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

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

BEHR AMERICA, INC.

Insert Supplier's Name

By: _____

By: _____

Date: _____

Date: _____

Title: _____

Title: _____

By: _____

By: _____

Date: _____

Date: _____

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