

No. 18-1048

IN THE
Supreme Court of the United States

GE ENERGY POWER CONVERSION FRANCE SAS,
CORP., A FOREIGN CORPORATION FORMERLY KNOWN AS
CONVERTEAM SAS,

Petitioner,

v.

OUTOKUMPU STAINLESS USA, LLC, *ET AL.*,

Respondent.

**On Writ of Certiorari
To The United States Court of Appeals
For The Eleventh Circuit**

JOINT APPENDIX

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**PETITION FOR CERTIORARI FILED FEBRUARY 7, 2019
CERTIORARI GRANTED JUNE 28, 2019**

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GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Court of Appeals Docket #: 17-10944
Docketed: 03/01/2017
Termed: 08/30/2018
Nature of Suit: 3385 Property Damage – Product
Liability
Appeal From: Southern District of Alabama
Fee Status: Fee Paid

* * *

OUTOKUMPU STAINLESS USA, LLC, *et al.*
Plaintiffs – Appellants,

v.

CONVERTEAM SAS, a foreign corporation now
known as GE Energy Power Conversion France SAS,
Corp.,
Defendant – Appellant.

Date Filed	Docket Text
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03/01/2017	CIVIL APPEAL DOCKETED. Notice of appeal filed by Appellant Outokumpu Stainless Usa, LLC on 02/27/2017. Fee Status: Fee Paid. Awaiting Appellant's CIP Due on or before 03/15/2017 as to Appellant Outokumpu Stainless Usa, LLC. Awaiting Appellee's CIP due on or before 03/29/2017 as to Appellee Coverteam SAS [Entered: 03/06/2017 02:45 PM]
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03/02/2017 CIVIL APPEAL DOCKETED. Notice of appeal filed by Appellants AIGEL, AXA Corporate Solutions Assurance SA UK Branch, HDI Gerling UK Branch, MSI Corporate Capital Ltd., Pohjola Insurance Limited, Royal & Sun Alliance, PLC, Sompo Japan Insurance Company Of America and Tapiola General Mutual Insurance Company on 03/01/2017. Fee Status: Fee Paid. Awaiting Appellant's CIP Due on or before 03/16/2017 as to Appellant AIG Europe Limited [Entered: 03/06/2017 03:41 PM]

* * *

05/15/2017 Appellant's brief filed by Outokumpu Stainless Usa, LLC. (ECF: Devin Dolive) [Entered: 05/15/2017 05:02 PM]

* * *

05/25/2017 Corrected Appellant brief filed by Appellants AIGEL, AXA Corporate Solutions Assurance SA UK Branch, HDI Gerling UK Branch, MSI Corporate Capital Ltd., Pohjola Insurance Limited, Royal & Sun Alliance, PLC, Sompo Japan Insurance Company Of America and Tapiola General Mutual Insurance Company. Service date: 05/19/2017 email - Attorney for Appellants: Dolive, Ferrini, Johnson, Ramey, Spear, Spear, Woods; Attorney for Appellees: Ford, Gilchrist, King, Vague; US mail -

Attorney for Appellants: Swinehart,
Wanhatalo, Wysocki. [Entered:
05/30/2017 10:08 AM]

* * *

06/30/2017 Appellee's Brief filed by Appellee
Covertteam SAS. (ECF: Sara Ford)
[Entered: 06/30/2017 04:20 PM]

* * *

07/26/2017 Reply Brief filed by Appellant
Outokumpu Stainless Usa, LLC. (ECF:
Devin Dolive) [Entered: 07/26/2017
04:58 PM]

* * *

08/07/2017 Corrected Reply Brief filed by
Appellants AIGEL, AXA Corporate
Solutions Assurance SA UK Branch,
HDI Gerling UK Branch, MSI
Corporate Capital Ltd., Pohjola
Insurance Limited, Royal & Sun
Alliance, PLC, Sompo Japan Insurance
Company Of America and Tapiola
General Mutual Insurance Company.
Service date: 08/01/2017 email -
Attorney for Appellants: Dolive,
Ferrini, Johnson, Ramey, Spear, Spear,
Woods; Attorney for Appellees: Ford,
Gilchrist, King, Vague; US mail -
Attorney for Appellants: Swinehart,
Wanhatalo, Wysocki. [Entered:
08/07/2017 12:08 PM]

* * *

- 12/14/2017 Appellee's Supplemental Authority filed by Appellee Covertteam SAS.-- [Edited 12/15/2017 by JLT] (ECF: Sara Ford) [Entered: 12/14/2017 04:18 PM]
- 12/15/2017 Supplemental Authority filed by Appellant Outokumpu Stainless Usa, LLC. (ECF: Devin Dolive) [Entered: 12/15/2017 05:46 PM]
- 12/18/2017 Supplemental Authority filed by Appellants AIGEL, AXA Corporate Solutions Assurance SA UK Branch, HDI Gerling UK Branch, MSI Corporate Capital Ltd., Pohjola Insurance Limited, Royal & Sun Alliance, PLC, Sompo Japan Insurance Company Of America and Tapiola General Mutual Insurance Company. (ECF: Joseph Ferrini) [Entered: 12/18/2017 04:24 PM]
- * * *
- 01/19/2018 Appellee's Supplemental Brief filed by Appellee Covertteam SAS. Service date: 12/29/2017 email - Attorney for Appellants: Dolive, Ferrini, Johnson, Ramey, Spear, Spear, Woods; US mail - Attorney for Appellants: Swinehart, Wanhatalo, Wysocki. [Entered: 01/19/2018 02:23 PM]
- * * *
- 02/02/2018 Appellant's Supplemental Brief filed by Appellants AIGEL, AXA Corporate Solutions Assurance SA UK Branch, HDI Gerling UK Branch, MSI

Corporate Capital Ltd., Royal & Sun Alliance, PLC, Sompo Japan Insurance Company Of America and Tapiola General Mutual Insurance Company. (ECF: Joseph Ferrini) [Entered: 02/02/2018 05:05 PM]

02/02/2018 Appellant's Supplemental Brief filed by Appellant Outokumpu Stainless USA, LLC. (ECF: Devin Dolive) [Entered: 02/02/2018 06:05 PM]

08/30/2018 Opinion issued by court as to Appellants AIGEL, AXA Corporate Solutions Assurance SA UK Branch, HDI Gerling UK Branch, MSI Corporate Capital Ltd., Outokumpu Stainless USA, LLC, Pohjola Insurance Limited, Royal & Sun Alliance, PLC, Sompo Japan Insurance Company Of America and Tapiola General Mutual Insurance Company. Decision: Affirmed in part and Reversed in part. Opinion type: Published. Opinion method: Signed. The opinion is also available through the Court's Opinions page at this link <http://www.ca11.uscourts.gov/opinions.> (17-10945X) (Opinion corrected on 8/30/2018.)--[Edited 08/30/2018 by JRP] [Entered: 08/30/2018 09:38 AM]

08/30/2018 Judgment entered as to Appellants AIGEL, AXA Corporate Solutions Assurance SA UK Branch, HDI Gerling UK Branch, MSI Corporate Capital Ltd., Outokumpu Stainless USA, LLC,

Pohjola Insurance Limited, Royal & Sun Alliance, PLC, Sompo Japan Insurance Company Of America and Tapiola General Mutual Insurance Company. (17-10945X) [Entered: 08/30/2018 09:40 AM]

- 09/20/2018 Petition for rehearing en banc (with panel rehearing) filed by Appellee Covertteam SAS. [17-10944] (ECF: Sara Ford) [Entered: 09/20/2018 05:21 PM]
- 11/09/2018 ORDER: The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled, the Petition(s) for Rehearing En Banc filed by Appellee Covertteam SAS are DENIED. [8615984-1] [Entered: 11/09/2018 08:17 AM]
- 11/19/2018 Mandate issued as to Appellants AIGEL, AXA Corporate Solutions Assurance SA UK Branch, HDI Gerling UK Branch, MSI Corporate Capital Ltd., Outokumpu Stainless USA, LLC, Pohjola Insurance Limited, Royal & Sun Alliance, PLC, Sompo Japan Insurance Company Of America and Tapiola General Mutual Insurance Company. [Entered: 11/19/2018 09:31 AM]

* * *

GENERAL DOCKET
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA
(Mobile)

CIVIL DOCKET FOR CASE#:
1:16-CV-00378-KD-C

Case title: Outokumpu Stainless USA, LLC v.
 Converteam SAS

Date Filed: 07/18/2016

Date Terminated: 04/18/2019

Assigned to: Judge Kristi K. DuBose

Jury Demand: Defendant

Nature of Suit: 385 Prop. Damage Prod. Liability

Jurisdiction: Federal Question

Case in other court: 11th Circuit, 17-10944

11th Circuit, 19-11930-B

* * *

Date Filed	#	Docket Text
07/18/2016	1	NOTICE OF REMOVAL by Converteam SAS from Circuit Court of Mobile County, AL, case number Case No. 2016-901202. (Filing fee \$ 400, Receipt number 1128-1929067, Online Credit Card Payment.), filed by Converteam SAS. (Attachments: # <u>1</u> Exhibit 1 (Declaration), # <u>2</u> Exhibit 2 (State Court Filings)) (Ford, Sara) (Additional attachment(s) added on 7/19/2016: # <u>3</u> Civil Cover

Sheet) (mcb). (Entered: 07/18/2016)
* * *

07/22/2016 6 MOTION to Compel Arbitration *and to Dismiss* by Converteam SAS. (Ford, Sara) (Entered: 07/22/2016)

07/22/2016 7 MOTION to Dismiss by Converteam SAS. (Attachments: # 1 Exhibit Business Entity Details) (Ford, Sara) (Entered: 07/22/2016)
* * *

08/03/2016 15 MOTION to Stay *Briefing and Consideration of Defendant's Motion to Compel Arbitration and Motion to Dismiss Pending Resolution of Jurisdictional Issues* by AIG Europe Limited, AXA Corporate Solutions Assurance SA UK Branch, HDI Gerling UK Branch, MSI Corporate Capital Ltd, Outokumpu Stainless USA, LLC, Pohjola Insurance Limited, Royal & Sun Alliance PLC, Sompo Japan Insurance Company of America, Tapiola General Mutual Insurance Company. (Spear, Mark) (Entered: 08/03/2016)
* * *

08/08/2016 23 RESPONSE in Opposition re 15 MOTION to Stay *Briefing and Consideration of Defendant's*

Motion to Compel Arbitration and Motion to Dismiss Pending Resolution of Jurisdictional Issues filed by Converteam SAS. (Ford, Sara) (Entered: 08/08/2016)

* * *

08/10/2016 29 ORDER denying 15 the motion to stay briefing and consideration of the Defendants pending motions. The Court will extend to plaintiffs the opportunity to file replies to the defendants responses in opposition to the motions to remand/replies in support of the pending motions due by 9/7/2016. Signed by Magistrate Judge William E. Cassady on 8/10/2016. (srd) (Entered: 08/10/2016)

* * *

08/17/2016 34 MOTION to Remand by AIG Europe Limited, AXA Corporate Solutions Assurance SA UK Branch, HDI Gerling UK Branch, MSI Corporate Capital Ltd, Pohjola Insurance Limited, Royal & Sun Alliance PLC, Sampo Japan Insurance Company of America, Tapiola General Mutual Insurance Company. (Attachments: # 1 Exhibit Exhibits to Motion to Remand)

(Spear, Mark) (Entered: 08/17/2016)

08/17/2016 35 MOTION to Remand to State Court *or, in the Alternative, Motion for Leave to Take Limited Discovery Regarding the Alleged "Agreement for Consortial Cooperation" and Incorporated Supporting Brief* by Outokumpu Stainless USA, LLC. (Attachments: # 1 Exhibit A (Transcript Excerpts)) (Dolive, Devin) (Entered: 08/17/2016)
* * *

08/31/2016 38 REPLY in Support re 6 MOTION to Compel Arbitration *and to Dismiss* and RESPONSE to motion to remand filed by Convertteam SAS (Attachments: # 1 Exhibit Plaintiffs' Joint Response, # 2 Exhibit Hawke Affidavit, # 3 Exhibit Meeting Minutes, # 4 Exhibit OTK Stainless v. Fives Complaint, # 5 Exhibit Secretary of State Business Entity Details, # 6 Exhibit Order) (Ford, Sara) (Entered: 08/31/2016)

09/02/2016 39 ORDER granting in part 4 Motion for Leave to File. Exhibits A, B and C shall remain under seal and Exhibit D shall be unsealed. The seal shall remain in effect until the conclusion of

this litigation, including any appeal. Signed by Judge Kristi K. DuBose on 9/2/2016. (cmj) (Entered: 09/02/2016)

09/02/2016 40 NOTICE of Filing Exhibit D by Convertteam SAS (unsealed) re 5 Sealed Document(s), per Order, doc. 39 (cmj) (Entered: 09/02/2016)

09/07/2016 41 REPLY to 6 MOTION to Compel Arbitration *and to Dismiss*, 34 MOTION to Remand filed by AIG Europe Limited, AXA Corporate Solutions Assurance SA UK Branch, HDI Gerling UK Branch, MSI Corporate Capital Ltd, Outokumpu Stainless USA, LLC, Pohjola Insurance Limited, Royal & Sun Alliance PLC, Sompo Japan Insurance Company of America, Tapiola General Mutual Insurance Company. (Spear, Mark) (Entered: 09/07/2016)

09/07/2016 42 REPLY to Response to Motion 35 *Reply in Support of Motion to Remand* filed by Outokumpu Stainless USA, LLC. (Dolive, Devin) (Entered: 09/07/2016)

* * *

11/21/2016 50 REPORT AND RECOMMENDATIONS re 7 MOTION to Dismiss filed by Convertteam SAS, 34 MOTION to Remand filed by

AXA Corporate Solutions Assurance SA UK Branch, Sompo Japan Insurance Company of America, HDI Gerling UK Branch, Tapiola General Mutual Insurance Company, MSI Corporate Capital Ltd, AIG Europe Limited, Royal & Sun Alliance PLC, Pohjola Insurance Limited, and 35 MOTION to Remand to State Court *or, in the Alternative, Motion for Leave to Take Limited Discovery Regarding the Alleged "Agreement for Consortial Cooperation" and Incorporated Supporting Brief* filed by Outokumpu Stainless USA, LLC. The Court recommends that the Motions to Remand (34 & 35) be denied and the Motion to Dismiss (7) also be denied as set out. Objections to R&R due 14 days from the date of service of this document. Signed by Magistrate Judge William E. Cassady on 11/22/2016. (srd) (Entered: 11/22/2016)

* * *

12/22/2016 57 ORDER ADOPTING 50 REPORT AND RECOMMENDATIONS re 7 MOTION to Dismiss filed by Convertteam SAS, 34 MOTION to Remand filed by

AXA Corporate Solutions Assurance SA UK Branch, Sompo Japan Insurance Company of America, HDI Gerling UK Branch, Tapiola General Mutual Insurance Company, MSI Corporate Capital Ltd, AIG Europe Limited, Royal & Sun Alliance PLC, Pohjola Insurance Limited, and 35 MOTION to Remand to State Court *or, in the Alternative, Motion for Leave to Take Limited Discovery Regarding the Alleged "Agreement for Consortial Cooperation" and Incorporated Supporting Brief* filed by Outokumpu Stainless USA, LLC. The Motions to Remand (34 & 35) are denied and the Motion to Dismiss (7) is denied. Signed by Judge Kristi K. DuBose on 12/22/2016. (cmj) (Entered: 12/22/2016)

12/22/2016 58 MOTION to Supplement *Motion to Supplement GE Energy's Motion to Compel and Dismiss* by Convertteam SAS. (Ford, Sara) (Entered: 12/22/2016)

12/27/2016 59 RESPONSE to Motion re: 58 MOTION to Supplement *Motion to Supplement GE Energy's Motion to Compel and Dismiss* filed by AIG Europe Limited,

AXA Corporate Solutions Assurance SA UK Branch, HDI Gerling UK Branch, MSI Corporate Capital Ltd, Pohjola Insurance Limited, Royal & Sun Alliance PLC, Sompo Japan Insurance Company of America, Tapiola General Mutual Insurance Company. (Spear, Mark) (Entered: 12/27/2016)

12/30/2016 60 RESPONSE in Opposition re 58 MOTION to Supplement *Motion to Supplement GE Energy's Motion to Compel and Dismiss* filed by Outokumpu Stainless USA, LLC. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3) (Dolive, Devin) (Entered: 12/30/2016)
* * *

01/05/2017 62 MOTION to Compel Arbitration (*and to Dismiss*) by Converteam SAS. (Ford, Sara) (Entered: 01/05/2017)
* * *

01/19/2017 64 RESPONSE to Motion re: 62 MOTION to Compel Arbitration (*and to Dismiss*) filed by AIG Europe Limited, AXA Corporate Solutions Assurance SA UK Branch, HDI Gerling UK Branch, MSI Corporate Capital Ltd, Pohjola Insurance Limited, Royal & Sun Alliance PLC,

Tapiola General Mutual Insurance Company. (Attachments: # 1 Exhibit 1) (Spear, Mark) (Entered: 01/19/2017)

01/19/2017 65 RESPONSE re 6 MOTION to Compel Arbitration *and to Dismiss (Notice of Supplemental Authority)* filed by Outokumpu Stainless USA, LLC. (Attachments: # 1 Exhibit Ex. A - Opinion) (Dolive, Devin) Modified on 1/20/2017 (cmj). (Entered: 01/19/2017)

01/19/2017 66 RESPONSE in Opposition re 62 MOTION to Compel Arbitration (*and to Dismiss*) filed by Outokumpu Stainless USA, LLC. (Dolive, Devin) (Entered: 01/19/2017)
* * *

01/30/2017 68 ORDER denying 58 Motion to Supplement; granting 6 Motion to Compel Arbitration. Accordingly OTK, Sampo and GE are referred for arbitration in accordance with the terms of the Supply Agreements. Accordingly, the motion to dismiss is Granted. Signed by Judge Kristi K. DuBose on 1/30/2017. (cmj) (Entered: 01/30/2017)

02/03/2017 69 ORDER granting 62 Motion to Compel Arbitration and the

claims of the Insurers are referred for arbitration in accordance with the terms of the Supply Agreements. Accordingly, GE's motion to dismiss is granted and the Clerk is directed to close this action. Signed by Judge Kristi K. DuBose on 2/3/2017. (cmj) (Entered: 02/03/2017)

02/27/2017 70 NOTICE OF APPEAL as to 69 Order on Motion to Compel Arbitration, 57 Order Adopting Report and Recommendations,, 68 Order on Motion to Supplement, Order on Motion to Compel Arbitration,, by Outokumpu Stainless USA, LLC. (Filing fee \$505 receipt number 1128-2029016, Online Credit Card Payment.) (Dolive, Devin) (Entered: 02/27/2017)

* * *

03/01/2017 73 NOTICE OF APPEAL as to 69 Order on Motion to Compel Arbitration, 57 Order Adopting Report and Recommendations,, 68 Order on Motion to Supplement, Order on Motion to Compel Arbitration,, by AIG Europe Limited, AXA Corporate Solutions Assurance SA UK Branch, HDI Gerling UK Branch, MSI Corporate Capital Ltd, Pohjola

Insurance Limited, Royal & Sun Alliance PLC, Sompo Japan Insurance Company of America, Tapiola General Mutual Insurance Company. (Filing fee \$505 receipt number 1128-2029692, Online Credit Card Payment.) (Spear, Mark) (Entered: 03/01/2017)

* * *

11/26/2018 85 ORDER entered that this action is before the court on reversal and remand from the Court of Appeals for the Eleventh Circuit (doc. 83). The Clerk is directed to reopen this action. Defendant shall file its answer or other response to the complaint on or before December 10, 2018. Signed by Chief Judge Kristi K. DuBose on 11/26/2018. (mcb) (Entered: 11/26/2018)

* * *

12/07/2018 87 Joint MOTION to Remand by All Plaintiffs. (Spear, Mark) (Entered: 12/07/2018)

12/10/2018 88 MOTION to Dismiss by Converteam SAS. (Attachments: # 1 Exhibit 1 - CRM Photo) (Ford, Sara) (Entered: 12/10/2018)

* * *

01/02/2019 92 MOTION to Stay by Converteam SAS. (Ford, Sara) (Entered: 01/02/2019)

- * * *
- 01/17/2019 97 RESPONSE in Opposition re 92 MOTION to Stay *Joint Opposition by All Plaintiffs* filed by Outokumpu Stainless USA, LLC. (Dolive, Devin) (Entered: 01/17/2019)
- * * *
- 02/12/2019 104 Order denying 92 MOTION to Stay. Defendant's 99 MOTION for Leave to File *Reply Brief* is granted. The Reply is deemed filed (doc. 99-1). Signed by Chief Judge Kristi K. DuBose on 02/12/2019. (nah) (Entered: 02/12/2019)
- * * *
- 03/19/2019 107 REPORT AND RECOMMENDATIONS re 87 Joint MOTION to Remand. It is RECOMMENDED that the Motion to Remand be GRANTED and that this action be remanded to the Circuit Court of Mobile County, Alabama. Objections to R&R due 14 days from the date of service of this document. Signed by Magistrate Judge William E. Cassady on 03/19/2019. (nah) (Entered: 03/19/2019)
- * * *
- 04/18/2019 110 ORDER ADOPTING 107 REPORT AND RECOMMENDATIONS as the opinion of this

Court. The 87 Joint MOTION to Remand by All Plaintiffs is GRANTED and this action is remanded to the Circuit Court of Mobile County, Alabama. Signed by Chief Judge Kristi K. DuBose on 04/18/2019. (nah) (Entered: 04/18/2019)

05/17/2019 111 NOTICE OF APPEAL as to 110 Order Adopting Report and Recommendations, by Converteam SAS. (Filing fee \$505 receipt number AALSDC-2400828, Online Credit Card Payment.) (Ford, Sara) (Entered: 05/17/2019)

* * *

09/07/2019 118 Unsealed document per Order, doc. 119 ***Sealed Document(s) - Exhibit 1 re: 117 Unopposed MOTION to Unseal Document filed by Converteam SAS. (Ford, Sara) Modified on 9/9/2019 (nah). (Entered: 09/07/2019)

09/09/2019 119 ORDER granting 117 Motion to Unseal Document re 118 Sealed Document(s) - Exhibit 1. Signed by Chief Judge Kristi K. DuBose on 09/09/2019. (nah) (Entered: 09/09/2019)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

OUTOKUMPU STAINLESS)
USA, LLC, *et al.*,)
) Plaintiffs)
))
v.))
CONVERTEAM SAS, a foreign) CASE NO. _____
corporation now known as GE)
ENERGY POWER)
CONVERSION FRANCE SAS,)
CORP.,)
) Defendant.)
)

DECLARATION OF EMMANUEL VERDIER

1. My name is Emmanuel Verdier. I am over the age of twenty-one years, I am not laboring under any disability, and I am making this declaration of my own free will and accord, with the knowledge that it may be used in legal proceedings in the above-caption case. I have personal knowledge of the matters stated herein.

2. I am the Project Manager at GE Energy Power Conversion France SAS, Corp. (“GE Energy”), formerly known as Converteam SAS. I have been employed by GE Energy for approximately 35 years and am competent to testify as to the matters set out herein.

3. On or about November 25, 2007, Outokumpu Stainless USA, LLC (“OTK Stainless”), then known as

ThyssenKrupp Stainless USA, LLC, entered into contracts with F.L. Industries Inc. (“FLI”) (the “Supply Contracts”) for the construction of three Cold Rolling Mills (“CRMs”) in Calvert, Alabama. *See* CRM 54-1, CRM 64, and CRM 74 Supply Contracts, attached hereto, as Exhibits A, B, and C.

4. On or about December 18th, 2007, FLI entered into an Agreement for Consortial Cooperation (the “Consortial Agreement”) with GE Energy under which it was to provide electrical equipment for the Cold Rolling Mills. *See* Consortial Agreement, attached hereto as Exhibit D. Pursuant to this Agreement, GE Energy supplied certain motors for use in the CMRs at the OTK facility.

5. GE Energy designed, engineered, and manufactured the motors supplied to the OTK Stainless facility in Nancy, France.

6. The motors were shipped from France to the OTK Stainless facility.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 18 , 2016



Emmanuel Verdier

IN THE CIRCUIT COURT OF
MOBILE COUNTY, ALABAMA

OUTOKUMPU STAINLESS USA,)	
LLC, SOMPO JAPAN INSURANCE)	
COMPANY OF AMERICA, as)	
subrogee of Outokumpu Stainless)	
USA, LLC, POHJOLA INSURANCE)	
LIMITED, as subrogee of Outokumpu)	
Oyj, AIG EUROPE LIMITED, as)	
subrogee of Outokumpu Oyj,)	
TAPIOLA GENERAL MUTUAL)	
INSURANCE COMPANY, as)	
subrogee of Outokumpu Oyj, AXA)	
CORPORATE SOLUTIONS)	
ASSURANCE SA UK BRANCH, as)	
subrogee of Outokumpu Oyj, HDI)	
GERLING UK BRANCH, as subrogee)	CASE NO.
of Outokumpu Oyj, MSI)	_____
CORPORATE CAPITAL LTD as sole)	
Corporate Member of Syndicate 3210,)	
as subrogee of Outokumpu Oyj, and)	
ROYAL & SUN ALLIANCE PLC, as)	
subrogee of Outokumpu Oyj, ,)	
Plaintiffs,)	
v.)	
CONVERTEAM SAS, a foreign)	
corporation, now known as GE)	
Energy Power Conversion France)	
SAS, Corp, and FICTITIOUS)	
DEFENDANTS A, B, C, D, and E,)	
Defendants.)	

COMPLAINT

Outokumpu Stainless USA, LLC, Sompo Japan Insurance Company of America as subrogee of Outokumpu Stainless USA, LLC, Pohjola Insurance Limited, as subrogee of Outokumpu Oyj, AIG Europe Limited, as subrogee of Outokumpu Oyj, Tapiola General Mutual Insurance Company, as subrogee of Outokumpu Oyj, Axa Corporate Solutions Assurance SA UK Branch, as subrogee of Outokumpu Oyj, HDI Gerling UK Branch, as subrogee of Outokumpu Oyj, MSI Corporate Capital Ltd as sole Corporate Member of Syndicate 3210, as subrogee of Outokumpu Oyj, and Royal & Sun Alliance plc, as subrogee of Outokumpu Oyj, bring the following Complaint against Defendant Convertteam SAS.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Outokumpu Stainless USA, LLC (“OTK”), is the owner of a stainless steel manufacturing and processing facility located in Calvert, Alabama (the “facility”). OTK has its principal place of business in Calvert, Alabama. The sole member of the OTK LLC is Outokumpu Americas, Inc., a Delaware corporation with its principal place of business in Calvert, Alabama, and Outokumpu Americas, Inc. is part of a group of companies whose ultimate corporate parent is Outokumpu Oyj of Espoo, Finland. At all times relevant, Outokumpu Oyj had an interest, including an insurable interest, in the motors involved in this matter.

2. Plaintiff Sompo Japan Insurance Company of America (“SOMPO”) is the American subsidiary of Sompo Japan Nipponkoa Insurance Inc having its principal place of business in New York, New York.

3. The remaining Plaintiffs, Pohjola Insurance Limited, AIG Europe Limited, Tapiola General Mutual Insurance Company, Axa Corporate Solutions Assurance SA UK Branch, HDI Gerling UK Branch, MSI Corporate Capital Ltd as sole Corporate Member of Syndicate 3210, and Royal & Sun Alliance plc, are insurance carriers who insured Outokumpu Oyj (and its subsidiaries, including Outokumpu Stainless) under a Master Insurance Policy that covered some of the loss that occurred at the Calvert facility.

4. Defendant Converteam SAS (“Converteam”) was, at all times relevant, a foreign corporation incorporated under the laws of France which had a registered agent in the State of Alabama.

5. Fictitious Defendants A, B, C, D, and E, whose identities are unknown to Plaintiffs at this time, are corporations, individuals, and/or entities, which were somehow involved by or with Converteam to ultimately provide some portion of the engineering, designing, manufacturing, supplying, fabrication, procurement, delivery, installation, supervision and/or commissioning of certain equipment to be delivered and installed in Mobile County, Alabama as referenced below. This Complaint will be amended to include the identities of these entities once their identities are discovered and liabilities are ascertained.

6. According to records on file with the Alabama Secretary of State, on or about February 25, 2013, Converteam changed its name to GE Energy Power Conversion France SAS, Corp.

7. Converteam and fictitious Defendants A through E engineered, designed, manufactured,

fabricated, procured, delivered, installed, serviced, supplied and/or commissioned certain motors and equipment during construction of the OTK facility in Calvert, Mobile County, Alabama.

8. This Court has subject-matter jurisdiction and personal jurisdiction over Converteam. Converteam had substantial, intentional contacts with the State of Alabama, had a registered agent in the State of Alabama, and conducted business in the State of Alabama.

9. OTK has approximately 900 employees who reside in the State of Alabama. It manufactures stainless steel in Alabama for delivery nationwide and beyond. OTK pays significant local and state taxes within the State of Alabama, and it has been a positive influence on the economy and welfare of citizens surrounding its facilities in Alabama.

10. Venue is correct and convenient in this jurisdiction, as the motors and equipment were delivered, installed, serviced, commissioned, and ultimately failed at the OTK facility in Calvert, Mobile County, Alabama.

BACKGROUND FACTS

11. In 2007, the construction of the stainless steel-making facility and cold rolling works in Calvert, Alabama (the “project”) was announced. Groundbreaking began in November 2007.

12. The project consisted of, *inter alia*, Cold Rolling Mills at the OTK facility, where cold rolled flat finished products of stainless steel would be produced.

13. Converteam provided certain motors and equipment and services integral to the completion and

proper construction of these Cold Rolling Mills. Each Cold Rolling Mill consisted of three motors: 1) Entry Motor, 2) Stand Motor, and 3) Exit Motor.

14. All told, Converteam engineered, designed, manufactured, fabricated, procured, delivered, installed, supervised, commissioned, and supplied a total of nine motors, three for each Cold Rolling Mill, Cold Rolling Mill 54 (“CRM 54”), Cold Rolling Mill 64 (“CRM 64”), and Cold Rolling Mill 74 (“CRM 74”),

15. Converteam impliedly represented and warranted that the Entry Motors, Stand Motors and Exit Motors for the Cold Rolling Mills were properly engineered, designed, manufactured, fabricated, procured, delivered, installed, supplied, commissioned, and/or were of a good and workmanlike quality and suited for their intended use at the OTK facility.

16. Indeed, the motors were an integral part of the construction and operation of the Cold Rolling Mills and were expected to last many years.

The Deficiencies in Converteam’s Motors and Equipment

17. On or about June 13, 2014, the Entry Motor in CRM 54 failed catastrophically. At the time of the failure, the Entry Motor had been in operation for less than two years.

18. Because of the failure of the Entry Motor, OTK inspected the Stand and Exit Motors in CRM 54. This inspection revealed similar problems in those motors as found on the Entry Motor in CRM 54. As a result, OTK was forced to shut down CRM 54 entirely so that the motors could be evaluated and repaired.

19. In July 2014, OTK sent the three motors from CRM 54 to General Electric International, Inc. (“GE”) in New Orleans so GE could inspect and repair the problems in the motors.

20. Following the failure of the Entry Motor in CRM 54, GE also conducted a baroscope inspection of the Converteam motors in CRM 64 and CRM 74.

21. This investigation uncovered similar problems with the motors on CRM 64 and 74, similar to the problem that caused the catastrophic failure of the CRM 54 Entry Motor on June 13, 2014.

22. The problems found in the motors were unknowable and undiscoverable by OTK during construction prior to the actual failure of the Entry Motor in CRM 54 and the inspection and disassembly of the motors.

23. Not only was CRM 54 out of use between June and December of 2014, but notwithstanding temporary repairs performed in September 2014, a Converteam motor on CRM 64 failed on or about February 4, 2015, and another Converteam motor on CRM 74 failed on or about August 25, 2015

24. Converteam failed to cure the deficiencies, including its negligent engineering, design, manufacture, fabrication, procurement, delivery, installation, and/or commissioning of the motors and equipment which resulted in millions of dollars’ worth of damages, including damage to CRM 54 following the June 13, 2014 failure, damage to other equipment, loss of production, and business interruption losses.

The Insurance Payments

25. At all times relevant, SOMPO insured OTK and its Calvert facility operations under a Commercial Lines Policy No. HPR-99250-XO (the “Policy”). This Policy contained a provision permitting SOMPO to pursue a subrogation action to recover any amount paid to its insured pursuant to the policy.

26. At all times relevant, the other named insurance carriers insured Outokumpu Oyj and its subsidiaries, including Outokumpu Stainless USA LLC, under a related Master insurance policy, Policy No. 16-376-879-0. That Policy also allows those carriers to pursue a subrogation action to recover any amount paid to any Outokumpu entity pursuant to the Master policy.

27. OTK and Outokumpu Oyj made certain claims upon SOMPO and the other insurers under the two Policies for the losses sustained due to the failure of the motors.

28. SOMPO and the other insurers have paid OTK and Outokumpu Oyj millions of dollars under the Policies for the losses claimed following the failure of the Entry Motor in CRM 54 and problems in the Stand and Exit Motors in CRM 54, as well as the motors in CRM 64 and CRM 74 at OTK’s Calvert facility.

29. Although partially compensated for its losses through insurance, OTK suffered damages well-beyond the amount paid by its insurers. Moreover, OTK was subject to a significant deductible that it is entitled to recover as damages in the present suit. Therefore, both OTK and its insurers are proper parties to this litigation, and each has suffered

substantial damages as a result of Converteam's actions and inactions.

30. SOMPO and the other insurers assert that they are equitably and contractually subrogated to the rights of OTK and Outokumpu Oyj to the extent of the payments made.

31. All conditions precedent to bringing this action have occurred, have been met, or have been waived.

COUNT I: NEGLIGENCE

32. Plaintiffs adopt and incorporate the facts and allegations stated in the above paragraphs as if set forth fully in this paragraph.

33. Converteam and fictitious Defendants A through E, among other duties, owed Plaintiffs a legal duty to properly engineer, design, manufacture, fabricate, procure, deliver, install, supervise, supply and/or commission the motors and equipment to assure proper construction and operation of the motors and the Cold Rolling Mills.

34. Converteam and fictitious Defendants A through E negligently engineered, designed, manufactured, fabricated, procured, delivered, installed, supervised, serviced, supplied and/or commissioned the motors and equipment.

35. Converteam's and fictitious Defendants' A through E breaches of duties caused a catastrophic failure of the Entry Motor in CRM 54 and resulted in problems in the Stand and Exit Motors in CRM 54, the motors in CRM 64 and CRM 74, and caused the shutdown of the Cold Rolling Mill and substantial damages to Plaintiffs.

36. As a result of Converteam's and fictitious Defendants' A through E breaches of duties, Plaintiffs suffered damages, including the costs to repair the damaged motors and equipment, loss of production, interruption of business and associated losses. In addition, Converteam's motors and equipment have caused damage to other property and equipment of OTK.

37. SOMPO and the other insurers have paid OTK and Outokumpu Oyj millions of dollars under the Policies for the losses claimed following the failure of the Entry Motor in CRM 54 and problems in the Stand and Exit Motors in CRM 54 and failures and problems with the motors in CRM 64 and CRM 74 at OTK's Calvert facility.

38. SOMPO and the other insurers assert that they are equitably and contractually subrogated to the rights of OTK and Outokumpu Oyj to the extent of the insurance payments made.

WHEREFORE, Plaintiffs seek all recoverable damages, court costs, fees, and interest in excess of the minimal jurisdictional limits of this Court for Converteam's and fictitious Defendants' A through E negligence.

**COUNT II: BREACH OF PROFESSIONAL
DESIGN AND CONSTRUCTION WARRANTIES**

39. Plaintiffs adopt and incorporate the facts and allegations stated in the above paragraphs as if set forth fully in this paragraph.

40. Converteam and fictitious Defendants A through E had a duty to properly engineer, design, manufacture, fabricate, procure, deliver, install, supervise, supply and/or commission their equipment

during construction of the facility and its Cold Rolling Mills.

41. Converteam and fictitious Defendants A through E breached this duty.

42. As a proximate result of the aforementioned breaches, Plaintiffs have been damaged.

43. SOMPO and the other insurers assert that they are equitably and contractually subrogated to the rights of OTK and Outokumpu Oyj to the extent of the insurance payments made.

WHEREFORE, Plaintiffs seek all recoverable damages, court costs, fees, and interest in excess of the minimal jurisdictional limits of this court for Converteam's and fictitious Defendants' A through E breach of design and construction warranties.

**COUNT III: BREACH OF IMPLIED
WARRANTIES (ALTERNATIVE)**

44. Plaintiffs adopt and incorporate the facts and allegations stated in the above paragraphs as if set forth fully in this paragraph.

45. In the alternative to Counts I and II, Converteam and fictitious Defendants A through E are merchants in the sale of goods and are subject to Alabama's Commercial Code, including implied warranties of fitness and merchantability. (Alabama Code §§ 7-2-314 and 315).

46. The motors and equipment from Converteam and fictitious Defendants A through E were neither fit nor merchantable.

47. Converteam and fictitious Defendants A through E breached these implied warranties, including those warranties implied over the course of

dealings and usage and trade under the facts and circumstances, causing a catastrophic failure of the Entry Motor in CRM 54 and failures and problems in the Stand and Exit Motors in CRM 54 and failures and problems with the motors in CRM 64 and CRM 74.

48. As a result of Converteam's and, fictitious Defendants' A through E breaches of the implied warranties Plaintiffs suffered damages, including the costs to repair the damaged motors and equipment, loss of production, interruption of business and associated losses. In addition, Converteam's and fictitious Defendants' A through E motors and equipment have caused damage to other property and equipment of OTK.

49. SOMPO and the other insurers have paid OTK and Outokumpu Oyj millions of dollars under the Policies for the losses claimed following the failure of the Entry Motor in CRM 54 and failures and problems in the Stand and Exit Motors in CRM 54 and failures and problems with the motors in CRM 64 and CRM 74 at OTK's Calvert facility.

50. SOMPO and the other insurers assert that they are equitably and contractually subrogated to the rights of OTK and Outokumpu Oyj to the extent of the insurance payments made.

WHEREFORE, Plaintiffs seek all recoverable damages, court costs, fees, and interest in excess of the minimal jurisdictional limits of this court for Converteam's and fictitious Defendants' A through E breach of implied warranties.

**COUNT IV: PRODUCTS LIABILITY/BREACH
OF ALABAMA EXTENDED MANUFACTURER'S
LIABILITY DOCTRINE (ALTERNATIVE)**

51. Plaintiffs adopt and incorporate the facts and allegations stated in the above paragraphs as if set forth fully in this paragraph.

52. In the alternative to Counts I and II, at all times relevant, Defendant Converteam and fictitious Defendants A through E were engaged in the business of designing, manufacturing, selling, distributing, installing, assembling, warranting, servicing, inspecting, and/or maintaining the motors and equipment that failed.

53. At the time of the failure, the motors and equipment were in substantially the same condition as when manufactured, sold, distributed, inspected, serviced, assembled, and/or maintained by Converteam and fictitious Defendants A through E.

54. The motors and equipment were being used in a manner that was reasonable and foreseeable.

55. The motors and equipment were unreasonably dangerous at the time they were placed into the stream of commerce by Converteam and fictitious Defendants A through E because they posed a risk of a catastrophic failure which could result in injury and damage.

56. Converteam and fictitious Defendants A through E had actual or constructive knowledge of the risk and danger of failure but, nonetheless, caused or allowed the motors and equipment to be placed into the stream of commerce in an unreasonably dangerous condition.

57. The unreasonably dangerous condition of the motors and equipment were the proximate cause of the failure that resulted in damage to the motors and other property, including the Cold Rolling Mill and equipment.

58. SOMPO and the other insurers have paid OTK and Outokumpu Oyj millions of dollars under the Policies for the losses claimed following the failure of the Entry Motor in CRM 54 and failures and problems in the Stand and Exit Motors in CRM 54 and failures and problems with the motors in CRM 64 and CRM 74 at OTK's Calvert facility.

59. SOMPO and the other insurers assert that they are equitably and contractually subrogated to the rights of OTK and Outokumpu Oyj to the extent of the insurance payments made.

WHEREFORE, Plaintiffs seek all recoverable damages, court costs, fees, and interest in excess of the minimal jurisdictional limits of this Court for Convertteam's and fictitious Defendants' A through E actions.

JURY DEMAND

Plaintiffs demand trial by struck jury on all issues so triable.

Respectfully submitted, this 10th day of June, 2016.

/s/ Ricardo A. Woods

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PLEASE SERVE DEFENDANT VIA
CERTIFIED MAIL AS FOLLOWS:

CONVERTEAM SAS, a foreign corporation,
now known as GE Energy Power Conversion
France SAS, Corp
c/o CT Corporation System
2 North Jackson St., Suite 605
Montgomery, AL 36104

IN THE CIRCUIT COURT OF MOBILE
COUNTY, ALABAMA

OUTOKUMPU STAINLESS)
 USA, LLC, a Delaware)
 limited liability company,)
 and SOMPO JAPAN)
 INSURANCE COMPANY)
 OF AMERICA, a New York)
 corporation, as subrogee of)
 Outokumpu Stainless USA,)
 LLC) CASE NO. _____
 Plaintiffs,) JURY
 v.) DEMANDED
 FIVES ST CORP., a)
 Delaware corporation,)
 FICTITIOUS)
 DEFENDANTS A, B, C, D,)
 E, F, G, H, I, and J)
 Defendants.)

COMPLAINT

Plaintiffs Outokumpu Stainless USA, LLC, formerly known as ThyssenKrupp Stainless USA, LLC, and Sompo Japan Insurance Company of America bring the following Complaint against Defendant Fives ST Corp., formerly known as F.L. Industries, Inc., stating as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Outokumpu Stainless USA, LLC (“OTK”) is the owner of a stainless steel manufacturing and processing facility located in

Calvert, Alabama. OTK has its principal place of business in Calvert, Alabama and is organized as a limited liability company under Delaware law. The sole member of the limited liability company is Outokumpu Americas, Inc., a Delaware corporation with its principal place of business in Calvert, Alabama.

2. Plaintiff Sompo Japan Insurance Company of America (“SOMPO”) is the American subsidiary of Sompo Japan Nipponkoa Insurance Inc., incorporated under the laws of New York and having its principal place of business in New York, New York.

3. Defendant Fives ST Corp. (“Defendant” or “F.L. Industries”) is a Delaware corporation and is believed to have its principal place of business in Mansfield, Ohio. Before it changed its name to Fives ST Corp., this Delaware corporation had its principal place of business in Pennsylvania. F.L. Industries represented to OTK that the Delaware corporation’s registered office was in Carnegie, Pennsylvania.

4. Fictitious Defendants A, B, C, D, and E, whose identities are unknown to OTK at this time, are corporations, individuals, and/or entities, which comprise the “consortium” along with F.L. Industries referred to in Paragraph 6 below. This Complaint will be amended to include the identities of said consortium members once their identities are discovered and liabilities are ascertained.

5. Fictitious Defendants F, G, H, I, and J, whose identities are unknown to OTK at this time, are corporations, individuals, and/or entities, which may not be considered as part of the “consortium” but were somehow involved by or with F.L. Industries to

ultimately provide some portion of the engineering, designing, manufacturing, supplying, fabrication, procurement, delivery, installation, supervision and/or commissioning of certain equipment to be delivered and installed in Mobile County, Alabama as referenced in Paragraph 6 below. This Complaint will be amended to include the identities of the non-consortium entities once their identities are discovered and liabilities are ascertained.

6. OTK and Defendant entered into a relationship whereby Defendant agreed to engineer, design, manufacture, fabricate, procure, deliver, install, supervise and commission certain equipment to be delivered and installed in Mobile County, Alabama. In conjunction with a consortium, whose composition is currently unknown to OTK (the "Consortium"), F.L. Industries provided said equipment to Mobile County, Alabama, supervised its installation, and commissioned the same in Mobile County, Alabama. *See Exhibit A*, attached hereto, which refers to the Consortium, of which OTK had no knowledge until receiving the letters that constitute Exhibit A.

7. This Court has subject-matter jurisdiction and personal jurisdiction over F.L. Industries. It made substantial, intentional contacts with the State of Alabama, including personal visits and meetings with OTK personnel in the State of Alabama, as well as numerous telephonic and electronic communications with OTK personnel in the State of Alabama. F.L. Industries also entered into contracts and contract changes with OTK for work to be performed in Mobile County, Alabama.

8. Additionally, OTK has approximately 900 employees who reside in the State of Alabama. It manufactures stainless steel in Alabama, for delivery nationwide and beyond. OTK pays significant local and state taxes within the State of Alabama, and it has been a positive influence on the economy and welfare of citizens surrounding its facilities in Alabama.

9. Venue is correct and convenient in this jurisdiction, as the contracts, equipment, and labor at issue were negotiated (although not exclusively), delivered, installed, and commissioned in Mobile County, Alabama.

BACKGROUND FACTS

The Contracts

10. In 2007, OTK (then known as ThyssenKrupp Stainless USA, LLC) announced the construction of a stainless steel-making facility and cold rolling works in Calvert, Alabama (the “Stainless Project”). The Stainless Project was concurrent with the construction of a carbon steel rolling mill and coil processing facility undertaken on the same Calvert site by ThyssenKrupp Steel USA, LLC, an entity that was, at that time, related to ThyssenKrupp Stainless USA, LLC.

11. The Stainless Project consisted of, *inter alia*, the Cold Rolling Works, where various processing steps are performed to produce the cold rolled flat finished products of stainless steel in various forms. The issues that are the subject of this dispute between OTK and F.L. Industries relate to certain processing manufacture and equipment for the Cold Rolling Works.

12. OTK (then known as ThyssenKrupp Stainless USA, LLC) entered into a series of contracts and arrangements with F.L. Industries to provide services and equipment and to perform work integral to the completion and proper functioning of three (3) separate cold rolling mills (the “Cold Rolling Mills”) for the Cold Rolling Works.

13. On or about November 25, 2007, OTK and F.L. Industries entered into a series of contracts for the Cold Rolling Mills: (i) Contract No. 1001 covered Cold Rolling Mill 54 (“CRM 54”); (ii) Contract No. 1002 covered Cold Rolling Mill 64 (“CRM 64”); and (iii) Contract No. 1003 covered Cold Rolling Mill 74 (“CRM 74”). Together these three (3) contracts covered in excess of Ninety-Nine Million Dollars (\$99,000,000.00) worth of services and equipment, including nine (9) separate motors—three (3) for each Cold Rolling Mill—to be installed and operated within the Cold Rolling Works. Each Cold Rolling Mill consists of the following motors: 1) Entry Motor, 2) Stand Motor, and 3) Exit Motor.

14. Under all three contracts, F.L. Industries represented and warranted that the Cold Rolling Mills and F.L. Industries’ work performance would be of a good and workmanlike quality and suited for their intended use and in accordance with the requirements of the Contracts.

15. F.L. Industries expressly undertook numerous obligations, including but not limited to, *inter alia*, the following obligations set forth in all three Contracts:

The Seller shall carry out all Work necessary to hand over the Contract Equipment to the Buyer in a finished state suitable for the

intended use, as stipulated in accordance with the Contract. . . .

* * *

The Seller shall perform, subject to the provisions of this Contract, with due care and diligence, the engineering, manufacturing, fabrication, shipment, delivery, supervision of Erection, Commissioning and Optimization of the Contract Equipment within the Contract Program.

§§ 2.1, 2.2.1(f).

16. Additionally, F.L. Industries represented and warranted in all three contracts that:

The Contract Equipment is free of defects in design, materials and workmanship and in accordance with the requirements of the Contract and its Annexes;

The Contract Equipment is suited for its intended use and complies with the requirements of production processes and safe operation as well as their long-term operations, as specified in the Contract.

§§ 15.1, 2.2.1(c)-(d).

The Deficiencies in F.L. Industries' Performance

17. Notwithstanding its express contractual obligations, representations, and warranties, F.L. Industries engineered, manufactured, fabricated and supplied deficient equipment and has failed to cure said deficiencies. This has resulted in numerous issues and losses relating to the performance of the

Cold Rolling Mill and OTK's production of stainless steel materials.

18. On or about June 13, 2014, a motor engineered, manufactured, supplied and installed by F.L. Industries for CRM 54 failed. At the time of the failure, the motor had only been in operation for less than a year.

19. The problem was first observed in the Entry Motor, but as a result of the failure of the Entry Motor, OTK also inspected the Stand and Exit Motors provided by F.L. Industries in CRM 54. The resulting inspection revealed similar problems in all three motors on CRM 54, and as a result, OTK was forced to shut down CRM 54 entirely so that the motors could be inspected and repaired.

20. Thereafter, OTK notified F.L. Industries of the failure of the motors on CRM 54. During July 2014, with notice to F.L. Industries and without objection, OTK sent the three motors from CRM 54 to General Electric International, Inc. ("GE") in New Orleans so that GE could perform remediation work on the CRM 54 motors.

21. In July 2014, and as a result of the unexpected failures regarding CRM 54, OTK also asked GE to inspect the motors engineered, manufactured, supplied and installed by F.L. Industries for CRM 64 and CRM 74. OTK provided notice of GE's inspection to F.L. Industries on July 23, 2014 and July 30, 2014. See **Exhibit B** and **Exhibit C** attached hereto.

22. GE's inspections of the additional motors revealed problems in the motors that F.L. Industries provided for CRM 64 and CRM 74 that were similar to

the problems in the motors that F.L. Industries provided for CRM 54.

23. As a result, GE performed work on the CRM 64 and CRM 74 motors in September of 2014, which was temporary in nature, to attempt to avoid prolonged loss of production on more than one CRM Line during the third and fourth quarters of 2014.

24. OTK provided notice of GE's work to F.L. Industries, and representatives of F.L. Industries visited GE's facilities in New Orleans.

25. Despite notice, F.L. Industries failed and refused to participate in OTK and GE's efforts to remediate the issues with the Motors that F.L. Industries supplied. Defendant did not, however, object to the work done to attempt to remediate the issues with the Motors.

26. Notwithstanding the temporary work performed by GE and OTK in September of 2014, the Entry Motor provided by F.L. Industries for CRM 64 suffered a break-down on or about February 4, 2015.

27. OTK immediately provided notice of the February 2015 problems to F.L. Industries. *See* OTK Correspondence dated February 5, 2015 attached hereto as **Exhibit D**.

28. Despite repeated notice, F.L. Industries has failed and refused to cure the problems in its motors. *See* F.L. Industries correspondence dated February 17, 2015 and February 24, 2015 attached hereto as **Exhibit E** and **Exhibit F**.

29. The problems with regard to the equipment provided by Defendant were, from OTK's perspective, unknowable and undiscoverable prior to the actual

failure of the equipment. The problems in the design, manufacture, and installation of equipment by F.L. Industries could not have been discovered without disassembling the equipment in question, and such disassembly is a complicated and expensive process. Moreover, OTK had no reason to disassemble F.L. Industries' equipment until the equipment began to fail. Based on F.L. Industries' representations and omissions, OTK believed that Defendant's work and equipment were of superior quality — otherwise, it would not have paid Defendant \$99 million.

OTK's Insurance Claim Upon Sompo

30. At time relevant hereto, SOMPO insured OTK and its Calvert operations under a Commercial Insurance Policy having policy number HPR-99250-XO (the "Policy"). This insurance policy contained a provision permitting SOMPO to pursue a subrogation action to recover any amount paid to its insured pursuant to the policy.

31. OTK made certain claims upon SOMPO under the Policy for the losses OTK sustained.

32. While said claims are currently being adjusted, SOMPO has paid OTK approximately Nine Million Dollars (\$9,000,000.00) for its losses. Additional amounts may be claimed and may be subject to additional adjustments.

33. As a direct result of Defendant's breaches and negligence set forth herein, SOMPO is entitled to recovery from Defendant.

COUNT I: BREACH OF CONTRACT

34. OTK and SOMPO adopt and incorporate the facts and allegations stated in the above paragraphs as if set forth fully herein.

35. OTK has fulfilled its obligations under the Contracts and has paid F.L. Industries for the services and equipment provided under the Contracts — approximately \$99 million.

36. F.L. Industries breached its obligations under its Contracts by, among other matters, failing to provide proper engineering, fabrication, equipment, and labor that complied with the contractual standards outlined in the Contracts.

37. OTK and SOMPO have suffered damages as a result of F.L. Industries' breaches.

WHEREFORE, OTK and SOMPO seek all damages, including evaluation/analytical costs, repair/remedial costs, operational losses, business opportunities, litigation costs, and other damages known and foreseeable to F.L. Industries, court costs, fees, and interest, for breach of contract by F.L. Industries.

**COUNT II: BREACH OF EXPRESS
WARRANTIES**

38. OTK and SOMPO adopt and incorporate the facts and allegations stated in the above paragraphs as if set forth fully herein.

39. F.L. Industries expressly warranted that each element of its contract packages, including each design, specification, engineering, manufacturing, procurement, and technical aspect or any other document or equipment prepared by or on behalf of F.L. Industries shall conform to all provisions of the

contract, including the “long-term operations” of the motors, and shall be completed in accordance with good engineering practices and industry standards.

40. F.L. Industries breached the express warranties, and as a result, OTK and SOMPO have suffered damages.

WHEREFORE, OTK and SOMPO seek all damages, including evaluation/analytical costs, repair/remedial costs, operational losses, business opportunities, litigation costs, and other damages known and foreseeable to F.L. Industries, court costs, fees, and interest, for breach of express warranties by F.L. Industries.

**COUNT III: BREACH OF IMPLIED
WARRANTIES**

(ALTERNATIVE COUNT)

41. OTK and SOMPO adopt and incorporate the facts and allegations stated in the above paragraphs as if set forth fully herein.

42. F.L. Industries is a merchant in the sale of goods and is subject to Alabama’s Commercial Code and the implied warranties of fitness and merchantability contained therein, including Alabama Code §§ 7-2-314 and 315.

43. F.L. Industries breached its implied warranties, including those warranties implied over the course of dealings and usage and trade under the facts and circumstances herein.

44. OTK and SOMPO have suffered damages as a result of F.L. Industries’ breaches of its implied warranties.

WHEREFORE, OTK and SOMPO seek all damages, including evaluation/analytical costs, repair/remedial costs, operational losses, business opportunities, litigation costs, and other damages known and foreseeable to F.L Industries, court costs, fees, and interest, for breach of implied warranties by F.L. Industries.

COUNT IV: NEGLIGENCE

45. OTK and SOMPO adopt and incorporate the facts and allegations stated in the above paragraphs as if set forth fully herein.

46. F.L. Industries, among other duties, owed OTK a legal duty to properly design, configure, supply, install, commission, test, and/or repair the equipment, to assure the “long-term operations” of the motors.

47. F.L. Industries negligently engineered, manufactured, procured, supplied, supervised, commissioned, optimized, configured, installed, and/or tested the equipment provided, resulting in equipment that does not meet the standards of the Contracts or as required by law.

48. F.L. Industries’ inadequate work has rendered the equipment deficient and unsuitable for its required and intended purpose. Remedial and corrective action is required.

49. As a result, OTK has incurred damages, including the costs to repair and correct the deficient work. In addition, the failure of F.L. Industries’ equipment has caused damages to other property and equipment of OTK and has caused OTK to have significant down-time and monetary losses.

WHEREFORE, OTK and SOMPO seek all damages, including evaluation/analytical costs, repair/remedial costs, operational losses, business opportunities, litigation costs, and other damages known and foreseeable to F.L. Industries, court costs, fees, and interest, for negligent action by F.L. Industries.

**COUNT V: MISREPRESENTATION AND
FRAUD IN THE INDUCEMENT**
(pleaded by OTK only)

50. OTK adopts and incorporates the facts and allegations stated in the above paragraphs as if set forth fully herein.

51. Following the original execution of the Contracts on or about November 25, 2007, representatives of F.L. Industries made misrepresentations of fact to OTK about the motors that F.L. Industries was designing, supplying, and installing.

52. Specifically, in order to induce OTK to agree to shortening the contractual warranty period on each of the motors, F.L. Industries knowingly misrepresented, among other things, the quality of the motors, the expected lifespan of the motors, and the quality of the Nancy, France facility in which the motors were manufactured.

53. All of these representations were false when made, and F.L. Industries' representatives knew the falsity of their statements.

54. OTK reasonably relied on the F.L. Industries' representatives' representations to its detriment.

55. For example, on March 3, 2011, relying on F.L. Industries' representations, OTK executed Contract

Variation No.: 1001-05, which purports to shorten the warranty period on the equipment provided pursuant to Contract No. 1001.

56. The warranty periods contained in Contracts 1002 and 1003 were likewise purportedly shortened on the same fraudulent bases.

57. These Contract Variations were based, in part, upon February 15 -17, 2011, meetings held in Calvert, Alabama between OTK and Xavier de Buttet and Jean-Marc Delahaye of F.L. Industries.

58. OTK would not have executed Contract Variation No.: 1001-05 if it had known about the problems in F.L. Industries' design, manufacture and installation of its equipment.

59. As a necessary, natural, and proximate consequence of these misrepresentations and OTK's reasonable reliance upon same, OTK has been damaged. The failure of F.L. Industries' equipment has caused damage to other property and equipment of OTK and has caused OTK to have significant down-time and monetary losses.

60. Furthermore, F.L. Industries' representations were made in deliberate and wanton disregard of OTK's legal rights and its operations, which have been negatively impacted.

WHEREFORE, OTK seeks all damages, including evaluation/analytical costs, repair/remedial costs, operational losses, business opportunities, litigation costs and other damages known and foreseeable to F.L. Industries, punitive damages, court costs, fees, and interest, for misrepresentation by F.L. Industries.

COUNT VI: SPECIFIC PERFORMANCE
(pleaded by OTK only)

61. OTK adopts and incorporates the facts and allegations stated in the above paragraphs as if set forth fully herein.

62. F.L. Industries represented it would supply motors for the Cold Rolling Mills pursuant to Contracts 1001, 1002, and 1003 that were fit for their intended uses.

63. F.L. Industries has unlawfully breached the terms of Contracts, 1001, 1002, and 1003 by, among other breaches, failing and refusing to supply motors as promised.

64. As a direct foreseeable and proximate consequence of F.L. Industries' breach of contract, OTK has been injured and damaged in an undetermined amount. In addition, Defendant's actions have and will result in irreparable harm to OTK.

65. Critically, the type motors supplied by F.L. Industries for the Cold Rolling Mills are not readily available in the market, thereby making it difficult for OTK to purchase replacements.

66. Accordingly, OTK is entitled to replacements for each of the nine (9) CRM motors as specific performance from F.L. Industries of its obligations under Contracts 1001, 1002, and 1003.

WHEREFORE, OTK requests that the Court enter an Order requiring Defendants to specifically perform their duties and obligations under the contracts by providing nine (9) replacement motors for the Cold

Rolling Mills. OTK also requests such other relief as the Court deems just and appropriate.

JURY DEMAND

OTK and SOMPO demand trial by struck jury on all issues so triable.

Respectfully submitted, this the 9th day of June, 2015.

s/ Ricardo A. Woods

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REQUEST FOR SERVICE

Plaintiffs request service, via certified mail, on the following:

Fives ST Corp., formerly known as

F.L. Industries, Inc.

c/o CT Corporation System, Its Registered Agent

2 North Jackson St., Suite 605

Montgomery, Alabama 36104

**AGREEMENT FOR
CONSORTIAL COOPERATION**

Between

FL INDUSTRIES Inc. a Company incorporated under the laws of the State of Delaware (USA) and having its registered office at 600 N Bell Ave, Ste 100 Pittsburgh, PA 15106 USA (hereinafter referred to as “**FLI**”)

and

DMS SA a Company incorporated under the laws of France and having its registered office at 1 rue du Mont de Templemars, 59139 NOYELLES LES SECLIN - France (hereinafter referred to as “**DMS**”)

And

CONVERTEAM SAS a Company incorporated under the laws of France and having its registered office at 1 square John H. Patterson, 91300 Massy - FRANCE (hereinafter referred to as “**CVT**”)

DMS, FLI and CVT are hereinafter called individually or collectively the PARTY (IES).

PREAMBLE

- Whereas FLI and DMS wish to reply to an invitation for tenderers issued by THYSSEN KRUPP STAINLESS USA LLC (hereinafter “TKS” or the “CLIENT”) for the supply of 3 cold roll mills and 1 skin pass, based on the inquiry documents (hereinafter called the PROJECT) in view of being awarded the resulting contract or contracts (hereinafter called the CONTRACT).
- Whereas CVT is interested in the electrical portion of the PROJECT,
- Whereas, with the aim of optimizing the chances of the PARTIES to be awarded the PROJECT, FLI, DMS and CVT have agreed to handle the PROJECT by forming an internal consortium, FLI submitting a bid to TKS and DMS and CVT acting as sub-contractors of FLI on a back to back basis,
- Whereas the PARTIES wish to set out the rules governing the execution of the CONTRACT, if their bid is successful;

Now, the PARTIES hereby agree as follows:

ARTICLE I - NATURE OF THE AGREEMENT

In entering into this agreement (hereafter called the AGREEMENT), the PARTIES declare they do not intend to constitute a company or a separate legal body of any kind and that any form of “affectio societatis” as well as any sharing of profits or losses are strictly excluded.

Joint and several liability:

Any joint and several liability between the PARTIES towards third parties (including the CLIENT) is strictly excluded. However, as an exception to this rule, FLI and DMS expressly agree to be jointly and severally liable towards CVT for the acts or omissions of one another in the internal consortial relationships.

ARTICLE II - PURPOSE OF THE AGREEMENT

1. The PARTIES shall carry out the CONTRACT awarded by the CLIENT, their respective areas of responsibility being as laid down in Appendix 1 specifying (i) the scope of supplies and services to be performed by each PARTY, (ii) the detailed time table, (iii) the leadership fee, and (iv) the consortial quotas of each PARTY which represent the total and sole remuneration of each PARTY. This Appendix 1 makes an integral part of this AGREEMENT.

Each PARTY shall assume the full responsibility for the fulfillment of its obligations under the CONTRACT and shall bear the full technical and commercial risk associated with its own scope of supplies and services. This applies also to the non-receipt or late receipt of payment(s) or installments agreed upon or not with the CLIENT.

Any and all stipulations of the CONTRACT shall apply mutatis mutandis to each PARTY for its own scope of supply and services.

Notwithstanding the foregoing, FLI and DMS expressly agree that CVT liabilities under the CONTRACT or the AGREEMENT for any reason whatsoever (including but not limited to, allocation of Penalties or Liquidated Damages, warranty

obligations, liabilities towards third parties including the CLIENT,...) shall in no case be increased or modified by the fact that the mechanical scope of supply and services is divided between FLI and DMS, and that the rights and obligations of CVT shall be considered in the same way as if CVT had signed an agreement for consortial cooperation with only one mechanical supplier.

2. The PARTIES shall mutually coordinate the scope of supply and services of each PARTY in such a way that, particularly at the technical interfaces, completeness and fulfilment of the supplies and services of the CONTRACT are ensured. If parts or services are required which have not been specifically mentioned in the PROJECT or the tender for the PROJECT or the CONTRACT, and which should have been included to ensure proper functioning of the plant, these parts or services shall be supplied free of charge by that PARTY to which such parts or services belong or can be attributed by their nature. If this cannot be determined, then the costs shall be borne by the PARTIES in proportion to their respective consortial quota as defined in Appendix 1. In the event of a dispute the Article IVA, clause 2 shall first apply and the final assignment shall be decided later by arbitration.
3. If parts or services are required by the CLIENT although not stipulated in the CONTRACT, and such parts or services lead to delays or additional costs which the CLIENT refuses to compensate, then said additional costs and resulting

indemnification shall be borne by the PARTIES in proportion to their respective consortial quota.

ARTICLE III - LEADERSHIP AND JOINT DECISIONS

1. The PARTIES commit themselves to the fundamental principles of timely, good-faith communication, coordination and cooperation with respect to implementation of all phases of the Project.

Each PARTY shall nominate its authorized project manager.

2. FLI is appointed as the LEADING PARTY of the internal consortium and accepts such appointment.

The LEADING PARTY shall assume the leadership for the CONTRACT (hereinafter called the LEADING PARTY). The tasks of the LEADING PARTY include in particular:

- a) the technical and commercial co-ordination of the supplies and services of the PARTIES,
- b) the representation of the contracting PARTIES' interests vis-à-vis the CLIENT with whom negotiations have to be conducted.

However, the negotiations with the CLIENT shall be conducted with the participation of the other PARTY when this PARTY is concerned.

Generally, correspondence shall be conducted by the LEADING PARTY. All important letters affecting the interests of the other PARTY shall be coordinated with the other PARTY before such letters are mailed.

All correspondence, notice and communication from either PARTY to the other PARTY shall be conducted in the English language.

- c) The invoicing of the supplies and services to the CLIENT on the basis of the invoices made by each PARTY for its respective scope of supply and services,
- d) The signature of the CONTRACT and of any other subsequent addendum.

The other PARTIES shall assist the LEADING PARTY in fulfilling these tasks to the best of its ability, and shall furnish it with all the necessary data and information, correctly and promptly. In particular, DMS shall give its utmost support to the LEADING PARTY, including material and financial support, or by providing necessary advices or personnel to this effect, in order for the LEADING PARTY to perform its task efficiently and to the interest of the PARTIES.

3. Consortial Meetings

- 3.1. The LEADING PARTY shall issue invitations to Consortium Meetings when it deems necessary. Normally, the meetings shall take place within a period of 8 calendar days from the invitation, and in urgent cases, within a period of 3 calendar days of the invitation. The agenda will be notified in advance and the meeting shall be held in OMS office (France) or in CVT office or at Jobsite (during the erection and commissioning phases) alternatively unless another place is mutually agreed by the PARTIES.
- 3.2. Each PARTY is entitled to convene a Consortium meeting.

3.3. The PARTIES are entitled and required to delegate authorized representatives to take part in Consortium meetings. The decisions reached at these meeting shall be binding on all PARTIES.

3.4. The decisions shall be made during such meetings unanimously. In case of differences that cannot be settled within three days, the representatives of the PARTIES shall submit the facts of the case to their top management for the purpose of achieving a mutually satisfactory solution.

Decisions may also be made without and/or after a meeting by way of written statements. In order to become legally effective decisions, such written statements require the unanimous approval of the PARTIES. Response to a request for such approval shall be given within 5 working days after receipt of the written statements and shall not be withheld without a good reason. Requests shall be deemed approved if no objection has been raised within the aforementioned period.

3.5. In case a PARTY duly invited in writing (letter, telecopy, electronic message) to a Consortium meeting fails to attend such meeting, then a second invitation will be sent to that PARTY within the seven following calendar days. In case of failure by the same PARTY to attend such second meeting, then the decisions taken in such second Consortium meeting shall be binding on such PARTY without its consent. Such decision will be made without prejudice of application of article XII ARBITRATION AND LAW.

3.6. The representatives delegated by the PARTIES to a Consortium meeting shall be deemed to be duly authorized by their companies. The PARTIES shall be responsible to ensure that the representatives delegated by them act within the scope of their authority.

3.7. The LEADING PARTY shall draw up the Minutes of Meetings, which shall be forwarded to the PARTIES within 7 working days after the meeting was held. Unless any written objections are filed with the LEADING PARTY within 5 working days of the date of receipt of the Minutes, the Minutes shall be deemed accepted.

The governing language during meetings shall be English. Day to day language can be French if the parties agree.

3.8. In the event a decision must be taken immediately for emergency matters and in order to avoid substantial damage to the Consortium and/or a PARTY, and an unanimous decision cannot be reached among the PARTIES or the case cannot be negotiated with the PARTIES in time without increasing the damage, then the LEADING PARTY shall make a provisional decision under its sole responsibility, which all PARTIES shall promptly implement, without prejudice to application of Article XI ARBITRATION AND LAW.

Such right to make decisions without negotiation with the other PARTY shall be limited to measures involving values not exceeding hundred thousand USD (100,000 \$) for each individual case without

prejudice of application of article XI
ARBITRATION AND LAW.

The LEADING PARTY shall immediately inform the other PARTY concerned of the decision taken, giving reasons in detail.

4. Any PARTY shall inform the LEADING PARTY prior to making any claim or giving any notice solely on its behalf in relation with the CONTRACT.
5. The LEADING PARTY shall be liable for damages caused to CVT by its performance of its leadership duties. Such liability shall, however, be limited to an amount equal to two percent (2%) of CVT consortial quota.

ARTICLE IV - LIABILITIES

IVA. Liability in the event of claims raised by the CLIENT or third parties

1. Each PARTY shall be liable and fully responsible for the proper implementation of its scope of supply and services and shall bear the full technical and commercial risk therefore during the proposal and negotiation stage as well as after the effective date of the CONTRACT, according to the provisions stipulated in the CONTRACT, and in such a way as if it were an independent contractor to the CLIENT. The PARTIES shall do their best to meet their obligations pursuant to the CONTRACT and to adhere to the stipulated deadlines and shall undertake all necessary measures in connection therewith.
2. If there are any disputes between the PARTIES as to who caused the claim and/or underlying damage

and therefore who shall be liable or to what extent the PARTIES shall bear any expenditures, payments or loss of payments, then each PARTY shall for the time being bear the disputed amount according to its consortial quota. Once an agreement has been reached concerning the amounts to be borne by each of the PARTIES, or if this has to be determined by arbitration, settlement and adjustment shall be carried out without delay.

This paragraph shall apply also in case of any other difficulty, dispute or conflict between the PARTIES.

Notwithstanding the foregoing, any dispute between FLI and DMS shall not be considered a dispute in the sense of the AGREEMENT and FLI and DMS commit to settle their dispute internally without any effect on CVT. In addition, any allocation of costs, payments, additional works, liquidated damages/penalties... under the AGREEMENT shall be handled in the same way as if DMS and FLI was one single PARTY.

3. Warranty :

All defects or damage shall be immediately remedied or repaired in accordance with the CONTRACT by the PARTY responsible for the scope of supply and services relating to which such defects or damages may occur. The PARTY liable and responsible for a defect or damage shall also bear the costs resulting from such defect or damage, additional measures which have to be taken as a result of such defect or damage, the direct costs for modifications of the scope of supply

and services of the other PARTY which may be required for the remedy and/or repair of such defects and/or damages, as well as the costs for new inspections and acceptances.

4. Indemnity :

If not stipulated differently in the contract, each PARTY (the “Indemnifying PARTY”) hereby agrees to indemnify, defend and hold harmless the other (the “Indemnified PARTY”) from, against and with respect to any cost, loss, liability, damage or expense (including without limitation counsel and accountants fees, and expenses reasonably incurred in investigating, preparing, defending or prosecuting any suit, claim, action, proceeding or demand), but not including consequential or punitive damages (hereinafter, all of such costs, losses, etc... “Damages”) arising out of or relating or attributable to (i) any misrepresentation or breach of any warranty, covenant or agreement to be performed by the Indemnifying PARTY pursuant to or in connection with this AGREEMENT, or (ii) any and all third party (including governmental entity) claims in respect of or caused in part by the Indemnifying PARTY’s performance under this AGREEMENT or other actions, delay or failure to perform. However, each PARTY shall be given the right to prove that its part of the scope of supply and services has not contributed to the claim in question. To the extent that the PARTY can prove no liability, it shall be relieved from and indemnified for liability for such claim.

5. Penalty or Liquidated Damages :

Liquidated Damages and/or Penalties arising from (i) delayed completion under the CONTRACT with the CLIENT and/or (ii) failure to achieve the guaranteed performances under the CONTRACT will be the responsibility of and shall be paid first by the PARTY causing or responsible for such delay/failure to achieve the guaranteed performances up to the maximum liquidated damages liability set forth in the CONTRACT applied to said PARTY's consortial quota. The excess thereof, shall be borne by all the PARTIES including the PARTY at fault, in accordance with their respective consortial quota.

IVB. Liability between the PARTIES in the absence of a claim by the CLIENT or third parties

Each PARTY shall be fully liable to the other PARTY for the acts, omissions and negligence of itself and its agents or servants, including subcontractors and sub suppliers, in the performance of its scope of supply and services.

Any claim for direct damages among the PARTIES shall be limited to actual costs incurred by the other PARTY to avoid impending or to eliminate existing damage or risk of damage. Compensation for consequential damages, including but not limited to loss of profit, loss of production and interest cost, that a PARTY may cause to another PARTY, shall be excluded.

IVC. CVT Liability

The overall CVT liability in relation with the AGREEMENT and the CONTRACT shall in no case exceed a cumulative amount equal to one

hundred and ten percent (110%) of CVT consortial quota as defined in Appendix 1.

IVD. Failure from FLI or DMS to perform its obligations

DMS undertakes with CVT that whenever FLI does not perform any of its obligations, especially the obligations relating to payments, when due under or in connection with the AGREEMENT, DMS shall perform or procure the performance of that obligation as if it were the principal obligor.

FLI undertakes with CVT that whenever DMS does not perform any of its obligations, when due under or in connection with the AGREEMENT, FLI shall perform or procure the performance of that obligation as if it were the principal obligor.

ARTICLE V - INSURANCES

Each PARTY shall take out or maintain at its own expense all insurances as stipulated in the CONTRACT.

ARTICLE VI - SECURITIES

The LEADING PARTY shall provide the overall SBLC and the other PARTIES shall at their own expense, provide those counter Stand By Letter of Credit appertaining to their respective consortial quota in favor directly to the issuing bank of the overall Stand By Letter of Credit in the same form as the overall Stand By Letter of Credit form which is enclosed in Appendix 2.

ARTICLE VII - PAYMENTS

The PARTIES shall be paid promptly by the LEADING PARTY, subject to payments having been

received from the CLIENT, by bank transfer, in the same currency the payment has been received.

Distribution of such payment shall be effected on prorata basis according to the outstanding payments due to the PARTIES according to the CONTRACT, except when such payments are related to supplies and services attributable to a PARTY.

ARTICLE VIII - REMEDIAL ACTION

If any defect should arise, or any damage be caused during erection, commissioning or trial operation or during the warranty period, the PARTIES shall be obliged - primarily however the one in whose scope of supplies and services such defect or damage has occurred to take all necessary action without delay and to a reasonable extent as provided in the CONTRACT, to prevent or minimize claims of the CLIENT on that account. This obligation shall apply irrespective of the question of responsibility and obligation of the responsible PARTY to bear the costs.

ARTICLE IX - SECRECY

The PARTIES agree to keep confidential and not to, directly or indirectly, use or disclose to any person or entity, for a period of five years following expiration of this AGREEMENT, all information of the other PARTY that derives value, actual or potential, from not being known to other persons, in whatever form ("Confidential information"), including but not limited to patent or other technical, financial and commercial information, customer and supplier lists or other information relating to the customers or suppliers of, or to persons who have dealings with, the other PARTY, provided that (i) each PARTY may use and disclose any such information that has entered the

public domain or become generally available (other than by any PARTY or any Affiliate thereof in breach of the obligations under this Section or other agreements) or has rightfully come into the possession of the PARTY or any Affiliate thereof (other than from the other PARTY) after the expiration of this AGREEMENT ; and (ii) to the extent that a PARTY or any Affiliate thereof may come legally compelled to disclose any of such information, such party or such Affiliate may disclose such information if they shall have used their best efforts, and shall have afforded to the other PARTY the opportunity, to obtain an appropriate protective order, or other satisfactory assurance of confidential treatment, for the information required to be so disclosed. However, nothing herein shall act as a waiver of or bar to a PARTY's rights to discover information under applicable law in the event of litigation.

Each PARTY shall cause its employees to be bound by the same secrecy obligation.

ARTICLE X - TAXES

Each PARTY shall solely and exclusively be responsible for the filing of tax returns and payment of any and all taxes and duties regarding its own scope of supply and services, including but not limited to customs and import duties, income taxes, sales and use taxes, value-added excise taxes, personal taxes etc.

Especially, each PARTY shall be bound to fully abide by the tax provisions of the CONTRACT and shall indemnify and keep the other PARTIES harmless from any failure to comply with such provisions.

Each PARTY will deliver the equipment DDP unloaded at site. In case the LEADING PARTY has to

pay any tax or any import duties at the import of the equipment in place of a PARTY, the value of these taxes or duties will be withheld automatically from the payment of the relative invoices of the PARTY.

ARTICLE XI - ARBITRATION AND APPLICABLE LAW

The Parties shall endeavour to settle any dispute, controversy or claim arising out of or in connection with this AGREEMENT or with the Contract or the breach, interpretation or validity of this AGREEMENT amicably.

If no agreement settlement can be reached within a reasonable time, either PARTY may commence arbitration after serving a 15 days written notice to the other PARTY. Such dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The place of arbitration shall be in Paris.

The language to be used in the arbitral proceedings shall be the English language. The decision of the arbitrators shall be final and binding upon all Parties. Reasonable expenses of the arbitration shall be paid as the arbitrators determine. The arbitral award, if any, shall be enforceable in any court of competent jurisdiction. The pendency of arbitration shall not suspend the obligations of the Parties, even not the subject in dispute, and the Parties shall go on working under the AGREEMENT and the Contract as if no arbitration were pending except as otherwise ordered by the arbitral panel.

In the event a dispute occurs between the CLIENT and the LEADING PARTY, which results in an arbitration

proceeding under the CONTRACT, the LEADING PARTY shall have the right to join the other PARTY into the arbitration proceedings with the CLIENT and the PARTY so joined hereby agrees that it shall be bound by the arbitral award, as long as the latter is given the opportunity to defend its interests in the arbitration procedure held under the CONTRACT.

This AGREEMENT shall be governed by the substantive French law, under the exclusion of the Vienna Convention on Contract for the International Sales of Goods (CISG).

ARTICLE XII - ASSIGNMENT

The assignment of any claims or other rights from this shall only be permissible with the prior written consent of the other PARTIES.

ARTICLE XIII - PARTIES TO KEEP EACH OTHER INFORMED

Each PARTY shall keep the other PARTY fully and promptly informed of all progress, events and matters affecting or relating to the other PARTIES scope of supplies and services and shall, without delay, give all relevant information and cooperation properly requested by the other PARTY.

ARTICLE XIV - PROPOSAL COSTS

Each PARTY shall be responsible for and shall bear at its own expense all its own costs for the tender preparation, participation in the PROJECT, and the CONTRACT negotiations and execution, including all financing costs and tax whatsoever.

ARTICLE XV - NEGATION OF AGENCY

Except as expressly defined herein, it is understood and agreed that neither PARTY is by this

AGREEMENT or anything herein contained, constituted or appointed the agent, partner, distributor, licensee or representative of the other PARTIES for any purpose whatsoever.

ARTICLE XVI - FORCE MAJEURE

Any delay or default by one of the PARTIES in carrying out its obligations under this AGREEMENT shall not be considered default if due to force majeure.

It is understood that only the events stipulated in the CONTRACT with the CLIENT shall be considered as force majeure.

ARTICLE XVII - COMING INTO FORCE AND DURATION

This AGREEMENT shall come into force as soon as it is signed by the PARTIES.

It shall terminate on the earliest of the following dates:

- on the 31st of December 2007, if the CONTRACT has not been signed with the CLIENT before this date, unless extension is mutually agreed upon among the PARTIES,
- the date on which the CLIENT gives notice that it has abandoned the PROJECT,
- the date on which evidence is received that the CLIENT has entered into a CONTRACT for a bid other than the bid submitted by FLI with DMS and CVT as consortium partners,
- upon signature of statement according to which the PARTIES agree to terminate this AGREEMENT,
- in the event of the CONTRACT being awarded to the LEADING PARTY, after settlement of the final

accounts with the CLIENT as well as with any third parties and among the PARTIES.

Notwithstanding the above, the provisions of articles IV LIABILITIES, IX SECRECY, X TAXES and XI ARBITRATION AND LAW shall survive the termination of the AGREEMENT.

ARTICLE XVIII - DEFAULT

If, for any reason, in the execution of a portion of the scope of supplies and services for which it is responsible, one of the PARTIES (other than the LEADING PARTY) fails to meet its obligations under the CONTRACT, it is hereby formally agreed that 15 days after notification by registered letter sent by another PARTY following such failure where such failure continues at the end of such 15 days period, the scope of supplies and services in question which the PARTY in default was responsible for shall be carried out by the LEADING PARTY or if necessary, by a third party chosen by it and approved by the CLIENT. In such event, neither the PARTY in default, nor its assignees or successors shall be entitled to act in any way concerning the execution of the CONTRACT, nor shall they be entitled to terminate the AGREEMENT for any reason.

The PARTY in default undertakes, if so requested by the LEADING PARTY to leave available on the site of the scope of supplies and services for his replacement or replacements, all materials, installations and equipment that it has supplied and to allow them to remain on site until settlement of the final accounts. Payment to the PARTY in default shall be based on an agreed record of the supplies and services that have been carried out. Concerning materials, installations

and equipment provided for a replacement, a survey shall be made and an agreed inventory prepared. The corresponding value of assignment or hire shall be established by common agreement, or, failing this, as declared by an expert, based on the prices agreed by the CLIENT.

If no third party can be found to carry out the section of the supplies and services in the same conditions as the PARTY in default, within the time limits stated by the CONTRACT, then the PARTY in default shall pay any additional costs.

The title of the materials, installations, equipment, documentation, design, plans, etc... not incorporated in the PROJECT will be returned to the PARTY in default only when and after the LEADING PARTY is completely indemnified as aforesaid.

ARTICLE XIX - MODIFICATIONS AND ADDITIONS, PARTIAL INVALIDITY

Any modifications and additions to this AGREEMENT shall be made in writing. In the event that any provision of this AGREEMENT shall prove to be invalid, illegal, void or unenforceable, such provision(s) shall be deemed to be separable from the other provisions of this AGREEMENT which shall remain binding. The PARTIES shall replace the invalid, illegal, void or unenforceable provision(s) by new but valid, legally permitted and enforceable provision(s) which come as close as possible to the original intentions of the PARTIES.

ARTICLE XX - WAIVERS

The failure of any PARTY to insist upon the strict performance of the terms, conditions and provisions of this AGREEMENT shall not be a waiver of future

compliance or a waiver of any other provisions hereof. No waiver of either any of any provision hereof shall be deemed to have been made unless expressed in writing and signed by a duly authorized officer of such PARTY.

ARTICLE XXI - ENTIRE AGREEMENT

This AGREEMENT constitutes the entire agreement for the PROJECT and cancels and replaces any and all other discussions whatsoever occurring before the date of the signature of this AGREEMENT.

ARTICLE XXII - NOTICES

To be valid, all notices shall be in writing and must be served either (a) by personal delivery or (b) first class air mail, certified or registered, return receipt requested, with proper postage prepaid, or (c) by fax, addressed as follows :

If to the CVT:

CONVERTEAM SAS
1 square John H. Patterson
91300 Massy
Attention: Mr. Emmanuel VERDIER, Project
Manager

If to FLI

c/o Fives DMS
1 rue du Mont de Templemars
ZI Lille Seclin

BP 30512 Seclin Cedex
Attention: Mr Dominique Le Fer

If to DMS:


1 rue du Mont de Templemars
ZI Lille Seclin
BP 30512 Seclin Cedex
Attention: M Jean Marc Delahaye

ARTICLE XXIII - MISCELLANEOUS

This Consortium AGREEMENT shall relate solely to this PROJECT and shall not extend to other activities. This AGREEMENT does not entitle either PARTY to any other rights in any future projects.

Made in three original sets in the 18th of December 2007.

FOR FLI
Mr Jean
Ledoux



FOR CVT
Mr Pierre
Roblin



FOR DMS
Mr Benoît
Caratgé



APPENDIX N°1**A. CLIENT CONTRACT No:**

CRM 54:	1001
CRM 64:	1002
CRM 74:	1003
SPM:	1004

B. SCOPE OF SUPPLY AND SERVICES

Scope Seller/Buyer: Annex C of each contract
Split of scope Mechanical supplier/ Electrical
supplier ref
1500 – 45 split of scope rev C.xls
1501 – 45 split of scope rev C.xls
1502 – 45 split of scope rev C.xls
4103 – 45 split of scope rev D.xls

C. DETAILED TIME TABLE

See Annex A2 of each contract

D. CONSORTIAL QUOTAS

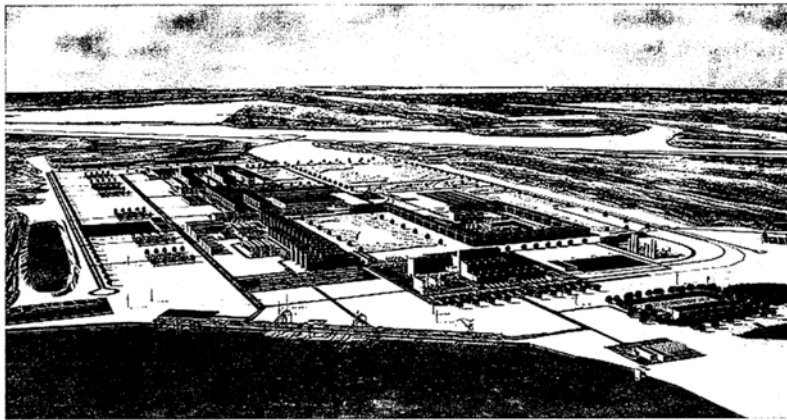
DMS + FLI:	80 650 000 \$
CVT:	36 000 000 \$
TOTAL CONTRACT:	116 650 000 \$

A company of
ThyssenKrupp **ThyssenKrupp Stainless USA**
Stainless



Contract N° 1001

Contract N° 1001



COLD ROLLING MILL 54 (CRM 54-1)

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Subject: Engineering, Manufacturing, Procurement, Supply, Erection, and Commissioning, Optimization, Training, Technical Documentation and Supervision Services of

One (1) Cold Rolling Mill 54 (CRM 54-1)

THIS CONTRACT made on the 25th day of November 2007, by and between

- A) ThyssenKrupp Stainless USA, LLC., a company duly incorporated in Delaware, United States of America and having its registered office at:
- 1087 Downtowner Boulevard
Mobile, AL 36609
United States of America
(hereinafter referred to as the ‘Buyer’)

and

- B) F.L. Industries Inc. company duly incorporated in Delaware. and having its registered office at:
- Carnegie Office Park
Building One, Suite 100
600 N. Bell Ave.
Carnegie, PA 15106, USA
(hereinafter referred to as the ‘Seller’)

(Buyer and Seller also referred to individually as “Party” and collectively as “Parties”)

RECITALS

WHEREAS the Buyer undertakes to establish a new stainless steel processing facility located in the vicinity of Mount Vernon, Alabama, United States of America (hereinafter referred to in this Contract and in the Annexes as the “Project”, “Greenfield”, “Compass” or “New Star”) and is desirous that certain work for the completion of the Project under the Contract should be undertaken by the Seller, as stated hereinafter; and,

WHEREAS the Seller states that it fully knows and understands the intended use and required functionality of the Project, and declares that it is fully qualified and possess the necessary approvals, knowledge, skills and experience with similar work, to render the services and to supply the goods subject to the terms of this Contract; and,

WHEREAS the Buyer has accepted the tender by the Seller for the undertaking completion of such work.

NOW THIS CONTRACT WITNESSETH and the Parties hereto mutually agree to the following:

CLAUSES**1 DEFINITIONS AND INTERPRETATIONS****1.1 Definitions**

In construing the Contract the following words and expressions shall have the following meanings hereby assigned to them:

- **“Acceptance Tests”** means the tests of the Contract Equipment for proof of the performance in accordance with the Performance Guarantees.

- **“Buyer’s Representative”** means any assistant or representative of the Buyer appointed from time to time to perform the duties delegated to him by the Buyer.
- **“Certificate of Acceptance”** means the written confirmation issued by the Buyer once the Acceptance Tests have been satisfactorily completed as required under this Contract and in accordance with the specimen attached as Annex K6.
- **“Certificate of Delivery”** means a written confirmation issued by the Buyer after the delivery of certain portion of the Contract Equipment as required under this Contract and in accordance with the specimen attached as Annex K7.
- **“Cold Commissioning”** means the functional tests of each Equipment Unit to be performed at the Construction Site without load in accordance with the Contract.
- **“Commissioning”** comprises both Cold Commissioning and Hot Commissioning.
- **“Company”** means the Buyer for the purpose of this Contract.
- **“Company’s Representative”** means the Engineer for the purpose of this Contract.
- **“Constructional Plant”** means appliances and things used on or in the vicinity of or at the Project in the execution of the work under the Contract but not forming part of the Works.

- **“Construction Site”** means the physical location within the Project where the Contract Equipment is going to be delivered, Erected, Commissioned, Optimized, accepted and where its normal operation and maintenance activities are going to be performed.
- **“Contract”** means this Contract and all Annexes hereto.
- **“Contract Equipment”** means all equipment, machines, parts, components and/or spare parts, to be delivered as stipulated within the Seller’s scope of supply, that are necessary to complete the scope of the Contract.
- **“Contract Price”** means the sum stated in the Contract as the price payable to the Seller by the Buyer as laid down in Article 5 and Annex A1.
- **“Current Good Manufacturing Practice (CGMP)”** shall mean “avoidance of technology that is not proven or technical solutions that are outdated for the particular application.”
- **“Date of Acceptance”** means the date stated in the relevant Certificate of Acceptance.
- **“Day”** means a calendar day unless specified otherwise in the Contract.
- **“Delivery”** means delivery in accordance with the delivery terms specified in this

Contract and “deliver” and “delivered” shall have a corresponding meaning.

- **“Effective Date”** means the date as defined in Article 29.5.
- **“Engineer”** means the person appointed by the Buyer to act in the name and on behalf of the Buyer for the purposes of the Contract and in lack of any appointment it means the Buyer.
- **“Engineer’s Representative”** means any assistant of the Engineer appointed from time to time to perform the duties delegated to him under this Contract.
- **“Equipment Unit”** means a an individual unit, part or single component or item belonging to the Contract Equipment.
- **“Erection”** means the erection and/or installation works of the Contract Equipment at the Construction Site including all works related to the reassembly, connection and placing the Contract Equipment into its final position.
- **“Factory Acceptance Tests”** means the tests specified in the Contract (or otherwise agreed by the Buyer and the Seller), which are to be made by the, Seller upon completion of manufacture of the Equipment Unit and at the Seller’s or his Sub-contractor’s workshops.
- **“Hot Commissioning”** means the operational tests of the Contract Equipment

with load to be performed at the Construction Site in accordance with the Contract.

- **“Hot Commissioning Completion Certificate”** means a written confirmation issued by the Buyer after the completion of Hot Commissioning as required under this Contract.
- **“Import Portion of the Contract Equipment”** means the part of the Contract Equipment imported into United States of America from other countries, as identified in Annex A1, Price Breakdown Schedule.
- **“Inspection”** means, dependant on the context, any of:
 - a) Inspections for quality control or manufacturing progress at Seller’s or Sub-contractor’s workshops,
 - b) Inspections for forward release,
 - c) Open packages inspections at the Construction Site.
- **“Intellectual Property”** means all patents, logos, copyright, trade marks, trade names, engineering, know how, confidential information and other industrial or intellectual property.
- **“Intellectual Property Items”** means all documents, drawings, materials, programs, systems, procedures, processes, formulae, methods of production, inventions or other discoveries made or produced by the Seller or the Buyer as the case may be in connection with this Contract.

- **“Item(s)”** (of Contract Equipment) means an individual component belonging to the Contract Equipment as itemized and numbered in Annex B.
- **“Laws”** means treaties, statutes, statutory instructions, governmental orders, laws, by-laws, decrees, ordinances, directives, regulations, rules, circulars, judgements, injunctions, decisions and the like of any national, regional state or local government, administrative or agency having jurisdiction with regard to the execution of the Contract, or all or any portion of the Work or the Project.
- **“Local Portion of the Contract Equipment”** means the part of the Contract Equipment manufactured in the United States of America.
- **“Month”** means Gregorian Calendar month.
- **“Optimization”** means the tuning of the Contract Equipment such that the Contract Equipment operates in compliance with the Performance Guarantees.
- **“Optimization Phase”** means the period from the completion of Hot Commissioning until Acceptance Tests have been successfully completed.
- **“Performance Guarantees”** the performance and operational criteria for acceptance applicable to the Contract Equipment and as specified in Annex B.

- **“Preassembly”** means the assembly, pre-erection and pre-installation works of the Contract Equipment made by the Seller at the workshop(s) of the Seller and Sub-contractors.
- **“Program”** and **“Contract Program”** means the main contractual time schedule included in Annex A2.
- **“Seller’s Representative”** means the project manager of the Seller appointed from time to time to perform the duties delegated to him by the Seller.
- **“Sub-contractor”** or **“Sub-supplier”** means any person (other than the Seller) used by the Seller for the supply of any part of the Contract Equipment, or any person to whom any part of the Contract has been sub-let by the Seller and the Sub-contractor’s legal successors in title, but not any assignee of the Sub-contractor.
- **“Supervision Services”** means the services rendered by the Seller to supervise the Erection, Commissioning and Optimization.
- **“Technical Documentation”** means all data, information, designs, drawings, diagrams, documents and manuals required under the Contract and specified in Annex J, and/or, are necessary for the Erection, Commissioning, operation, maintenance and repair of the Contract Equipment and for the proper training of the Buyer’s operational and maintenance personnel.

- **“Technical Specification”** means the specification of the Contract Equipment set forth in Annex B
- **“Variation”** means a variation or modification as may be made in accordance with Art. 27 of this Contract or its Annexes.
- **“Week”** means any period of seven (7) days.
- **“Work”** means a part or the whole work to be executed by the Seller in accordance with the Contract, including any variations provided for by the Contract, which by the Contract is to be handed over to the Buyer.

1.2 Interpretations

Words referring persons or parties shall include firms, corporations and any organization having legal capacity where the context requires.

Words in singular also include the plural and vice versa where the context requires.

When Seller is mentioned it shall be understood as Sub-contractors included, except if expressly stated otherwise.

2 SCOPE OF CONTRACT AND GENERAL OBLIGATIONS OF THE PARTIES

2.1 Scope of the Contract

The Seller shall supply and/or provide to the Buyer the engineering, manufacturing, fabrication and/or procurement of a Cold Rolling Mill 54 (Contract Equipment), including the Erection, Commissioning, Optimization, Technical Documentation, Supervision Services

and the training of the Buyer's personnel as stipulated under the Contract.

The Seller shall carry out all Work necessary to hand over the Contract Equipment to the Buyer in a finished state suitable for the intended use, as stipulated and in accordance with the Contract, as specified in Annex B and according with Annex C.

All items of accessory, fitting, sundry apparatus and labor, whether specified in detail or not in Annex B or Annex C, which are necessary for the contractual completion of the Seller's obligations under the Contract, shall be considered as part of the scope of supply as per the Contract.

The Parties herewith agree and fully recognize that the supplies and services to be performed under the Contract do not include, constitute nor consider any type of communication or information relative to industrial, commercial or scientific experience, knowledge or technology transfer.

2.2 Obligations of the Seller

2.2.1 General

- a) The Seller shall supply all goods, materials and services as stipulated in the Contract being directly necessary in order to achieve the performance of the Contract Equipment in line with the quality and specified requirements of the Contract.
- b) The Seller is responsible for examining the Contract documents provided by the Buyer

and also other relevant documents and any information obtainable by the making of reasonable inquiries to determine the risk, timing and cost for the proper execution of the Work, including the safety requirements at the Construction Site. The Buyer shall however remain liable for the correctness and accuracy of the Contract documents and any information provided to the Seller.

- c) The Seller shall be deemed to have visually inspected and familiarized itself with the Construction Site and its surroundings.

The Construction Site may be inspected by third parties only after approval by the Buyer.

- d) The Seller shall base the execution of this Contract on the data with respect to climatic, hydrological, soil and general conditions at the Construction Site, as specified in Annex B.
- e) The Seller is responsible for complying with the relevant codes, standards and regulations applicable at the Construction Site. The Seller shall be deemed to have examined such Laws, codes, standards and regulations. The Seller shall be responsible to obtain and maintain all permits, licenses and authorizations necessary for the execution of the Work unless specified as the Buyer's obligations pursuant to Article 2.3. Without limiting the foregoing, in the event Seller is performing any installation Work at the Construction Site, Seller warrants that

it is duly licensed as a general contractor in the State of Alabama to the extent required by Alabama law to perform any portion of the Work. Furthermore, the Seller warrants that its Sub-contractors will be duly licensed as sub-contractors in the State of Alabama to the extent required by Alabama law, should it be necessary to perform their contractual obligations. The Buyer shall afford all reasonable assistance requested by the Seller to obtain the visas, permits, licenses and authorizations necessary for the execution of the Work.

- f) The Seller shall perform, subject to the provisions of this Contract, with due care and diligence, the engineering, manufacturing, fabrication, shipment, delivery, Erection, Commissioning and Optimization of the Contract Equipment within the Contract Program.
- g) The Seller shall submit to the Engineer the schedule of activities and the procurement schedule as required under Annex F.
- h) The Seller shall be responsible for the care of the Contract Equipment until the completion of Hot Commissioning. In the event that any part of the Contract Equipment shall suffer loss or damage whilst the Seller has responsibility for the care thereof, the same shall be made good by the Seller to the extent that the Buyer has provided a proper safeguarding of the installations.

- i) The Seller shall make good any defects in the Contract Equipment during the warranty period for which the Seller is responsible as laid down in this Contract and in Article 15 in particular.
- j) The Seller shall within fifteen (15) days after the Effective Date inform the Engineer in writing of the name of the Seller's Representative and other key personnel and of any subsequent changes. The Seller shall withdraw the Seller's Representative or its key personnel for important reasons only.

If the Engineer makes an objection to the appointment of the Seller's Representative or any other key personnel, based on misconduct or incompetence, the Seller shall terminate the appointment and appoint another Seller's Representative or key personnel. The Engineer shall substantiate its opinion in writing.
- k) Matters within the knowledge of a Seller's Representative shall be deemed to be within the knowledge of the Seller.

Any written direction of the Engineer shall:

- If it relates to the execution of work at the Construction Site and is given to the Seller's Representative on the Construction Site; or
- If it relates to the execution of work at any other place and is given to the Seller's Representative at the other place;

be deemed to have been received by the Seller.

2.2.2 Manufacture and Engineering

The Seller shall be responsible for Contract Equipment related engineering, planning, manufacturing, fabrication and supply, as specified under the Contract.

All supplies and services shall be in conformity with the Current Good Manufacturing Practices (CGMP) as of the Effective Date unless otherwise specified under the Contract. Technical innovations related to the Contract Equipment that become known to the Seller after the Effective Date and during its implementation and continuing operation for a maximum period of ten (10) years shall forthwith be communicated to the Buyer unless the Seller is restricted by confidentiality obligations to third parties.

The Seller shall comply with the technical requirements and standards specified in Annex B unless prohibited by any applicable Laws. In this case the Seller has to meet the technical requirements and standards required under these Laws and the Seller shall bring to the notice of the Buyer any conflict or contradiction arising from the requirements of this provision to find an amicable solution.

2.2.3 Erection

The Seller shall verify the foundations for the Contract Equipment prior to the start of Erection.

The Seller shall perform the Erection as required in Annex C and have a competent representative present on the Construction Site

and, if agreed between the Seller and the Engineer, have a competent representative present at other places at which activities relating to the execution of the Work are taking place.

The Erection by the Seller includes responsibility for the unloading of the Contract Equipment at the Construction Site and care and storage of the Contract Equipment.

During Erection, the Seller shall comply with:

- a) The Construction Site management requirements and procedures of the Contract; and,
- b) The Engineer's site management instructions; and,
- c) Security arrangements the Buyer will establish for the Construction Site, including identification of persons entering the Construction Site; and,
- d) All Laws affecting health, safety, the environment or operations at the Construction Site; and,
- e) The Construction Site safety rules as stipulated by the Buyer. These will be based on the principles established in Annex I "Occupational Health and Safety Requirements".

The Seller shall further:

- f) Provide all things and take all measures necessary to protect people and property to the extent that (i) safety is considered first

- and foremost (ii) such people and property is under the custody and care of the Seller;
- g) Avoid unnecessary interference with the passage of people and vehicles;
 - h) Prevent damage, obstruction or other interferences with services;
 - i) Prevent nuisance and unnecessary noise disturbance; and
 - j) Prevent environmental damage or pollution.
 - k) Obtain and maintain the relevant licenses as required by the Laws including license to work as general contractor in the State of Alabama.

The Seller's obligations shall include as a minimum the provision of barricades, guards, temporary roads, footpaths, warning signs, lighting, watching, traffic flagging, protective clothing, removal of obstructions and protection of services and compliance with all rules and regulations of the Occupational Safety and Health Administration ("OSHA"), for the Seller's scope of supply. This clause cannot be interpreted as transferring the liability of the Buyer as to the safety of the Site Construction from the Buyer to the Seller.

If the Seller damages property, including without limitation property of public utilities or the environment on or adjacent the Construction Site, the Seller shall promptly make good the damage and pay any compensation required by the Laws.

2.2.4 Commissioning, Optimization

Responsibility of the Seller for Commissioning includes responsibility for Cold and Hot Commissioning and Optimization, until all Acceptance Tests have been performed successfully.

2.2.5 Technical Documentation

The Seller shall prepare and deliver the complete Technical Documentation as laid down in Article 8 and generally stipulated in the Contract.

2.2.6 Training

The Seller shall provide training and instruction of operating staff before and during operation, maintenance and repair, in such a manner and with the aim that the Buyer's qualified operating staff is able to operate the Contract Equipment independently and properly in accordance with Annex A2. The production and/or processing know-how is to be provided by the Buyer.

2.2.7 Protection of the Contract Equipment

The Contract Equipment shall be packed, marked and shipped by the Seller according with the provisions laid down in Annex H.

2.2.8 Transportation and Customs Clearance**2.2.8.1 General**

The Seller shall schedule transportation to the Construction Site to avoid public holiday periods, etc., when transport restrictions may be applied. The Engineer will not grant an extension of time for delays caused thereby.

The Seller shall as the importer be responsible for exporting of the Import Portion of the Contract Equipment out of the country of manufacture, importing it into the United States and for its transportation to the Construction Site.

2.2.8.2 Hazardous Materials

Before and at the time Contract Equipment is shipped, Seller will give Buyer sufficient warning in writing (including appropriate labels on all Contract Equipment, containers, and packing, including without limitation disposal and recycling instructions, material safety data sheets and certificates of analysis) of any restricted or Hazardous Material (as defined in Annex M) as per the Laws, that is an ingredient or part of the Contract Equipment, together with any special handling instructions that are needed to advise carriers, Buyer, and their employees how to take appropriate measures while handling, transporting, processing, using or disposing of it or its containers and packing.

In any case, the Seller will be liable for any consequences that might derive from non-compliance by the Seller and its sub-contractors with the Laws regarding, but not limited to, the transport, handling, import or any other issues related to hazardous or restricted materials.

2.2.8.3 Country of Origin

Seller agrees to fulfill any customs related obligations, origin marking or labeling requirements, and local content origin

requirements, including the country of origin requirements of the North American Free Trade Agreement and any other duty preference programs, and to provide to Buyer all documentation and information related to such requirements. If Contract Equipment is manufactured in a country other than the United States of America, Seller will mark the Contract Equipment "Made in [country of origin]". In accordance with U.S. Customs Law, markings shall be permanent as the nature of the product will permit and located in a conspicuous place, easily available to U.S. Customs inspection upon arrival in the United States. If the Contract Equipment is of a nature whereby marking is impossible, a securely affixed tag with country of origin named shall suffice.

2.2.8.4 Import and Export

Seller shall comply with all Laws related to export and import of the Contract Equipment and with the requirements of any export and import licenses. Seller will promptly advise Buyer of any material or components imported into the country of origin and any duty included in the Contract Price. Seller will provide to Buyer and the appropriate governmental agency the documentation necessary to determine the admissibility and the effect of entry of the Contract Equipment into the United States. Seller warrants that any information that is supplied to Buyer about the import and export of the Contract Equipment is true and that all sales covered by the Contract

will be made at not less than fair value under the anti-dumping laws of the United States.

The Seller shall be entitled to designate a custom broker for the import process.

Should the custom clearance / formalities be delayed for reasons beyond Seller's control, the Contract Program / milestone dates shall be postponed accordingly to the extent that such delay has a negative impact on said milestone dates.

The Buyer intends to obtain the designation of the Construction Site as a Foreign-Trade Zone Subzone (FTZ). A FTZ can provide benefits during the Erection of the Contract Equipment. The importer can opt for the most favorable tariff classification and defer duty payments till the mass production starts. On the other side FTZ requirements must be observed strictly. The Buyer shall keep the Seller informed within undue delay whether and when an application for a Foreign-Trade Zone Subzone was effectively filed and about the final decision of the competent authority. In case the FTZ is established:

The Seller agrees to coordinate with the Buyer whether possible FTZ benefits regarding the importation of the Contract Equipment shall be realized by a FTZ activation of relevant parts of the Construction Site with US Bureau of Customs and Border Protection (CBP). Seller and Buyer shall then share all FTZ benefits and observe all FTZ requirements.

2.2.9 Spare Parts

The Seller shall supply the spare parts for Contract Equipment as laid down in Annex C.

2.2.10 Coordination with Sub-contractors and cooperation with other suppliers and contractors

The Seller shall coordinate the Work with his Sub-contractors and cooperate with other contractors or suppliers appointed by the Buyer which are executing work related to or relevant for the Contract Equipment or any other activity at the Project, to ensure that the Work is correctly and timely executed and all interfaces are properly accounted for, as described in more detail in Annex D.

2.2.11 Laws and other requirements

The Contract Equipment shall meet the relevant Laws and standards in force and applicable in the United States of America and at the Construction Site, with respect to particularly, but not limited to, technical compliance, prevention of fire and accidents, environmental requirements (as described but not limited to in Annex M) and other safety regulations.

In case certain standards do not exist in United States of America or at the Construction Site or are less stringent, such standards which are in force or are common practice at the Effective Date in the European Union, shall be complied with, to the extent they do not violate the corresponding US standard.

The Seller shall comply with the occupational, health, safety and environmental laws and regulations in use at, or associated with work at the Construction Site and in particular will comply with (i) the specific requirements and instructions of the Engineer, (ii) as specified in Annex B, (iii) the requirements set forth in Annex M and (iv) the requirements of this Contract.

The Seller shall observe changes of Laws and standards mentioned in this Article 2.2.11. Changes which may have a material impact on the Contract Equipment and/or Seller's obligations under this Contract shall be brought to the attention of the Buyer. The impact of such changes on the Contract (including Contract Program and Contract Price) are to be mutually agreed upon by the Parties. With respect to changes of the tax Laws and regulations having an impact on the costs this cost impact shall be added to or deducted from the Contract Price as the case may be.

2.2.12 Execution of the Seller's obligations by the Buyer

If the Seller fails to comply with its obligations under this Contract and does not remedy such non compliance within a reasonable period of time after receipt of Buyer's notification, the Buyer may in addition to any other remedy, perform the obligation on the Seller's behalf and the cost incurred by the Buyer shall be a due debt from the Seller to the Buyer.

2.2.13 Labor Matters

The Seller will hire, under his exclusive responsibility, direction and dependence, the necessary personnel or Sub-contractors to accomplish the Work, in the understanding that all the Sub-contractors or personnel hired by the Seller will be deemed as their employees and that no employee-employer relationship will exist between the Seller employees and the Buyer. Nevertheless, all said personnel present at the Construction Site shall act, at all times, in compliance with the Buyer's regulations.

The Seller agrees to indemnify and hold the Buyer harmless from and against any and all third party claims, demands, losses, costs, expenses, obligations, liabilities, actions, suits, damages to tangible property or injuries to persons, including death, sustained by the Seller's employees, Sub-contractors, or agents, and all amounts paid in settlement of any such claims which may derive from any labor matter regarding the Seller's employees.

Likewise, it is the responsibility of the Seller to:

- a) Provide proper insurance protection for its employees, Sub-contractors, agents or personnel; so these shall be entitled to receive the benefits provided under this insurance; and,
- b) To get in advance any work visa or other migratory document required by any of his employees, personnel or Sub-contractors.
- c) Comply with the applicable Laws at the Construction Site related to labor matters.

2.2.14 Environmental Requirements

The Contract Equipment shall fully comply with the environmental requirements for its operation as per the Laws and as specified in Annex B.

While performing Work at or near the Construction Site, Seller shall comply with all applicable Laws for the protection of public health and the environment, as well as Seller's solid waste and hazardous waste disposal procedures as provided in the Contract, including but not limited to the requirements set forth in Annex M.

2.3 Obligations of the Buyer

2.3.1 The Buyer shall provide in accordance with the Contract Program the following goods and/or services as far as not otherwise stipulated in the Contract:

- Provisions and preparation of the Construction Site in a safe and unobstructed condition as far as possible or feasible.
- Civil works including process and electrical room buildings for the equipment (including foundations)
- Process and electrical room buildings for the equipment (including foundations).
- Support to the Seller during the import process and customs clearance where legally necessary.
- Space for the Seller to establish his site facilities as stated in Annex C.

- Space for the Seller to store the Contract Equipment
- Operators and materials of sufficient quantity and quality to operate the Contract Equipment under the direction of the Seller during the Commissioning and Optimization phase.
- Required services, equipment, utilities and other work and materials as laid down in Annex C.
- Obtaining of the approvals and permits of authorities in the United States of America for the Erection, Commissioning and operation of the Contract Equipment. The Seller shall assist the Buyer in obtaining these approvals and permits by providing necessary information and documentation as reasonably requested by the Buyer.

2.3.2 The Buyer will inform the Seller about all changes of Laws mentioned in Article 2.2.11 which come to his attention. Failure of Buyer to so notify Seller shall not release Seller from any obligations under this Contract, nor from compliance with such changes.

3 OPTION

The Seller offers to the Buyer the delivery, erection and the related services for one CRM 54” on the basis of the technical and commercial conditions laid down in this Contract (copy-mill).

In the calculation of the price of said copy-mill the Seller will not include the engineering costs.

The Buyer has the right to call this Option within 3 years from the Effective Date of this Contract.

4 PROGRAMS AND PROGRESS REPORTING

- 4.1 The Seller shall prepare schedules, programs and progress reporting data as provided for or as required in Annexes A2, D and F. For this reporting the MS-Project software shall be used.
- 4.2 The Seller shall not make any material alteration to the Contract Program without the Engineer's consent, and such consent shall not constitute an approval of an extension of time under the Contract unless specifically advised to the Seller by the Engineer. To the extent that these alterations have no consequence on the Schedule of Milestones, such consent shall not be unreasonably withheld.
- 4.3 If the Engineer can evidence, giving documented justification that progress of the Seller under this Contract does not match the Contract Program, he shall be entitled to order the Seller in writing to revise the Contract Program. The Seller shall thereafter revise the Contract Program, subject to a prior written notification thereof to show the modifications necessary to ensure the completion of the milestones at the dates specified in the Schedule of Milestones (Annex A2 Part 2). Any such revision of program shall not constitute an approval of an extension of time under the Contract unless specifically advised to the Seller of such extension of time by the Engineer.

- 4.4 The Engineer shall be entitled to notify the Seller if he reasonably considers that the progress of the Seller under the Contract does not match the Contract Program. Following receipt of such a notice the Seller shall take such steps as may be necessary to remedy or mitigate the likely delay, including revision of the Program. Subject to Article 4.5 the Seller shall not be entitled to any additional payment for taking such steps.
- 4.5 The Seller shall inform the Engineer in writing as soon as he is aware of any circumstance, whether in Seller's control or not, which may cause a delay in the performance of the Work, and propose measures to minimize or overcome the delay. In case that the delay is not attributable to the Seller, the Seller shall be entitled to be paid for the additional efforts if agreed upon by the Parties upon submission of documented evidence.

5 CONTRACT PRICE

- 5.1 The Contract Price is firm and fixed and binding with the exception of any Variations. The Contract Price is inclusive of the whole of the Seller's scope described in this Contract, all reasonable services and other incidentals associated with or necessary for the execution of the Seller's scope of Work described, and for the performance of the obligations of the Seller under this Contract.
- 5.2 The Contract Price is USD 28,231,750.00 (in words: twenty eight million two hundred thirty one thousand and seven hundred fifty U.S.

DOLLARS), and is based on the terms and conditions stipulated under the Contract.

5.3 The break-down of the Contract Price is laid down in Annex A1.

6. PAYMENTS AND TERMS OF PAYMENT

6.1 Payments

Payments will be deemed effected upon being credited to the Seller's respective bank account. All payments shall be made in accordance with the conditions stated hereunder. All payments under this Contract will be effected within thirty (30) days after receipt by the Buyer of all the respective documents. If the advance payment is not received within 30 days from receipt by the Buyer of all the respective documents, the Schedule of Milestones laid down in the Program shall be postponed by the same duration as the delay, provided however that the delay of the payment shall be longer than 10 days after the initial 30 days.

6.2 Terms of Payment

The Contract Price shall be paid in accordance with the following conditions and proportions:

6.2.1 Advance Payment

An Advance Payment in the amount of USD 5,329,120.00, which amount represents twenty percent (20%) of the price for the Contract Equipment and the Technical Documentation shall be paid by the Buyer to the Seller within thirty (30) days after receipt of the following documents:

- a) Pro-forma Invoice (one original and three copies) covering one hundred percent (100%) of the Contract Price for the Contract Equipment and the Technical Documentation;
- b) One (1) original and three (3) copies of Seller's commercial invoice covering twenty percent (20%) of the Contract Price for the Contract Equipment and the Technical Documentation;
- c) Standby Letter of Credit as Advance-Payment security in the amount of USD 5,329,120.00, which amount represents twenty percent (20%) of the price for the Contract Equipment and the Technical Documentation, in accordance with the specimen enclosed in Annex K 1 to this Contract; said Letter of Credit will be reduced pro-rata value of each shipment arrived on the Construction Site.
- d) Standby Letter of Credit as Performance security in the amount of USD 2,823,175.00, which amount represents ten percent (10%) of the Contract Price in accordance with the specimen enclosed in Annex K 2 to this Contract.

6.2.1a Intermediate Payment

An Intermediate Payment in the amount of USD 2,664,560.00, which amount represents ten percent (10%) of the price for the Contract Equipment and the Technical Documentation shall be paid by the Buyer to the Seller after receipt of the Technical Documentation defined

as “key documents” in Annex A2 and after presentation of the following documents:

- a) One (1) original and three (3) copies of Seller’s commercial invoice covering ten percent (10%) of the Contract Price for the Contract Equipment and the Technical Documentation;
- b) Standby Letter of Credit as Intermediate Payment security in the amount of USD 2,664,560.00, which amount represents ten percent (10%) of the price for the Contract Equipment and the Technical Documentation, in accordance with the specimen enclosed in Annex K 1 to this Contract; said Letter of Credit will be reduced pro-rata value of each shipment arrived on the Construction Site.

6.2.2 Payment against delivery of Technical Documentation

A total amount of USD 386,940.00, which amount represents eighty percent (60%) of the price for the Technical Documentation (as per Annex A1) shall be paid by the Buyer once all of the key Technical Documentation identified with an [♣] in Annex A2 Part 3, has been delivered to the Buyer and against presentation of the following documents:

- a) One (1) original and three (3) copies of Seller’s commercial invoice showing the eighty percent (80%) of the price for the Technical Documentation; and,
- b) A written statement duly signed by the Seller (one original and three copies) stating

that all the marked key Technical Documentation has been delivered.

6.2.3 Payments against delivery of the Contract Equipment, Hot Commissioning and Acceptance

6.2.3.1 An amount of USD 14,300,385.00, which amount represents fifty-five percent (55%) of the price for the Contract Equipment shall be paid pro-rata for deliveries at the Construction Site and against presentation of the following documents:

- a) One (1) original and three (3) copies of Seller's commercial invoice showing Contract Equipment or part thereof, description, quantity, unit price, total amount and Contract Number; and,
- b) One (1) original and three (3) copies of the quality certificate(s) issued by the manufacturer(s) of the Seller or Seller's own workshop(s) and signed by the Seller or Seller's representative; and,
- c) If applicable, all the relevant documentation which proves that the imported Equipment Unit(s) has been imported into the U.S.A. as a definitive form as per the Laws; and,
- d) One (1) original and three (3) copies of one of the original of packing list identifying contents of each package; and,
- e) One copy of the original Certificate of Delivery issued by the Buyer; or
in case of warehousing, against presentation of one (1) original and three (3) copies of

FIATA Warehouse Receipt or storage receipt in accordance with the specimen enclosed in Annex K 4 and one (1) copy of a written permission to store the equipment signed by the Buyer.

6.2.3.2 An amount of USD 1,300,035.00, which amount represents five percent (5%) of the price for the Contract Equipment shall be paid against presentation of following documents:

- a) One (1) original and three (3) copies of Seller's commercial invoice(s), and
- b) One (1) copy of the original Hot Commissioning Completion Certificate signed by the Buyer.

6.2.3.3 An amount of USD 2,664,560.00, which amount represents ten percent (10%) of the price for the Contract Equipment and the price for the Technical Documentation shall be paid against presentation of following documents:

- a) One (1) original and three (3) copies of Seller's commercial invoice(s), and
- b) One (1) copy of the original Certificate of Acceptance signed by the Buyer, and
- c) Standby Letter of Credit as warranty guarantee for ten percent (10%) of the Contract Price in accordance with the specimen enclosed in Annex K 3.

6.2.4 Payment for Supervision Services, Commissioning and Training

An amount of USD 1,586,150.00, which amount represents one hundred percent (100%) of the price for Supervision Services, Commissioning

and Training shall be paid on monthly basis pro rata physical progress against schedule and against presentation of following documents:

One (1) original and three (3) copies of Seller's commercial invoice in accordance with the respective Certificate of Payment signed by the Buyer.

6.2.5 Payment of Erection price

The Buyer shall reimburse to the Seller the Erection Price and pay the handling fee in accordance with Article 14.1.

6.3 General

All commercial invoices shall comply with the fiscal regulations and/or requirements prevailing at the Construction Site.

The Buyer shall provide the Seller with a Letter of Comfort in accordance with the specimen included as Annex K 5.

All payment securities in form of Standby Letter of Credit as per this Article 6 shall be issued by a first class bank acceptable to the Buyer, in accordance with the wordings in Annex K. The Standby Letter of Credit for the Advance Payment (ten percent) shall be valid until complete delivery, the Standby Letter of Credit for the Performance of the Contract (ten percent) shall be valid until four (4) weeks after the contractual scheduled time for acceptance and the Standby Letter of Credit for warranty will be valid until expiration of the warranty period and free of charge to the Buyer.

All bank charges except the charges of Seller's bank will be borne by the Buyer. Seller will bear the charges of his bank.

One copy of the demand to the bank issued by the Buyer will be sent to DMS by registered mail 10 working days before the date of the Buyer's demand to the bank under this Standby Letter of Credit which stipulates which contractual obligations DMS has failed to fulfill.

Payments for the respective installments shall in each case be effected within thirty (30) days from the receipt of the agreed documents by the Buyer.

All payments shall be deemed to have been effected when and as far as the amounts have been credited in full in USD to the bank account of the Seller without any restriction.

7 DELIVERY AND TERMS OF DELIVERY

7.1 The Seller shall deliver the Contract Equipment and the Technical Documentation on the basis DDP Construction Site according to the latest revision of INCOTERMS 2000 (ICC 2000) and unload the same at the Construction Site.

The Seller shall nominate only one project manager for all shipments under the Contract.

7.2 The Contract Equipment with the exception of Technical Documentation shall have a total net weight of approximately 820 metric tons.

7.3 The Seller shall complete the delivery of the Contract Equipment in accordance with the Contract Program and the schedule of milestones as laid down in Annex A2.

- 7.4 The Seller shall apply in writing to the Buyer for permission to deliver the Contract Equipment or any part thereof three (3) weeks prior to readiness for shipment. No part thereof may be delivered without written permission from the Buyer unless the Seller has not received an answer two (2) weeks prior to readiness for shipment.
- 7.5 Necessary shipping documents shall be delivered as detailed in Annex H of this Contract.
- 7.5.a The title of ownership of any part of the equipment will pass from the Seller to the Buyer upon arrival of said equipment and/or part of equipment on the Construction Site.
- 7.5.b After the delivery of certain portion of the Contract Equipment at the Construction Site as required under this Contract the Buyer shall issue a Certificate of Delivery to the Seller.
- 7.6 The Seller shall supply the spare parts, consumable parts and wear and tear parts as well as special tools and other equipment as specified under the Contract for the timely Commissioning of the Contract Equipment.
- 7.7 If the Seller, subject to the written agreement of the Engineer, borrows for Erection, Commissioning or Optimization of the Contract Equipment spare parts from the Buyer, the Seller shall replace those parts to the Buyer without undue delay.
- 7.8 In case the Seller has the Contract Equipment or part thereof ready for delivery in accordance with the Contract Program and the Buyer

requests the Seller to postpone the shipment for more than thirty (30) days, the parties agree upon the following procedure:

The Buyer shall inform the Seller without undue delay as to whether the relevant equipment should be stored at a warehouse facility within the Buyer's organization or any other warehouse able to issue a FIATA warehouse receipt.

In case the Buyer has chosen to have the relevant equipment stored at a facility within the Buyer's organization, the Buyer shall arrange for a storage receipt in favor of the Seller, to be handed over to the Seller upon deposit of such equipment for release of payment.

The Seller shall issue to the Buyer a confirmation letter in favor of the Buyer regarding the Seller's obligation to repay the freight cost for such equipment in favor of the Buyer.

Upon the Buyer's request, the Seller is obliged to forward the stored equipment to the Buyer at the Seller's expense against return of said confirmation letter.

All direct costs resulting from postponement of shipment over thirty (30) days at the Buyer's request made after readiness for shipment will be borne by the Buyer.

8 DELIVERY OF TECHNICAL DOCUMENTATION

- 8.1 The Seller shall deliver to the Buyer the Technical Documentation at the Construction Site or to another place notified to Seller by the Engineer in compliance with the provisions and at times as set forth in Articles 2.2.8, 22 and in Annexes A2, C and J.
- 8.2 Not Used
- 8.3 Within two (2) working days after dispatching the Technical Documentation, the Seller shall, unless otherwise specified in Annex H, notify the Engineer by fax or email of the Contract no., transport agent or courier service, airway bill or courier bill no., the Technical Documentation list, number of parcels, weight, date of dispatch and destination.
- 8.4 The arrival date as confirmed by transport or courier agent of the Technical Documentation shall be deemed as the actual date of delivery of the Technical Documentation.
- 8.5 Should any of the delivered Technical Documentation be found missing, damaged, incomplete or otherwise not conform with the requirements of this Contract, the Buyer shall advise the Seller immediately and the Seller shall redeliver the missing, damaged and incomplete documentation by courier service free of charge to the Buyer within a reasonable time after the written notification by the Buyer (as a rule to be dispatched not later than five (5) working days after receipt of notification).

9 PACKING AND MARKING

The Seller shall comply with the requirements set forth in Annex H in relation to the packing and marking of the Contract Equipment and Technical Documentation and shall observe any size, weight or handling limitations that may be applicable.

10 ENGINEERING AND ENGINEERING LIAISON

10.1 The Seller shall carry out the engineering and engineering liaison meetings under this Contract (not less than the ones stated in Annex A2 Part 2) to comply with the engineering and quality standards defined in this Contract. Such meetings will be carried out at the time and at the location agreed between the Engineer and the Seller.

10.2 After the Effective Date the Seller shall at his own cost take part in all engineering liaison meetings at the Buyer's office unless the Engineer nominates another location. During the liaison meetings the Engineer has the right to ask the Seller to make reasonable modifications to the engineering without in any way releasing the Seller from his responsibility under this Contract.

In case the Seller deems the Engineer's modification inappropriate, or with major effect on time and cost, he is obliged to raise his objections without undue delay, before incorporating the Engineer's modifications.

10.3 The Seller may propose reasonable modification(s) during the course of the

engineering of the Contract Equipment. These modifications at the Seller's own costs may be done on condition that the specifications, quantities, types, sizes and performance standards as stipulated in the Annexes hereto shall not be impaired or diminished and that the technical standards and the lifetime of the Contract Equipment shall not be reduced.

The Seller shall inform the Engineer without delay of the details of such modification proposal. Any modification can be made only after the written consent by the Engineer without in any way releasing the Seller from his responsibility under this Contract.

- 10.4 The Seller shall be responsible for the detailed engineering of the Contract Equipment in accordance with the requirements of the Contract. Insofar as the Seller is required by the Contract or is instructed by the Engineer to comply with any detailed engineering provided by the Buyer or the Engineer the Seller shall be responsible for the correct incorporation of such engineering unless within a reasonable period of time after receipt thereof he shall have given notice to the Engineer of any inadequacies, or time or cost impact, the Seller perceives in the engineering. If no such notice is given, the Seller shall be responsible for the overall engineering of the Contract Equipment.
- 10.5 Should the Seller's engineering be found erroneous or incomplete, the Seller shall correct the errors at no cost to the Buyer without delay.

- 10.6 The Seller shall submit to the Engineer for review:
- a) within the timeframe laid down in the Contract Program and according to Annex A 2 Part 3, Technical Documentation Schedule, all drawings, and other technical data, or information (including calculations), and in the quantities specified in Annex J;
 - b) during the progress of the Contract, the documentation stipulated under Annexes C, D, F, G, H and I.

The Engineer shall communicate the result of his review to the Seller. If he fails to do so within the time given in the Contract Program, or, if no time limit is specified, within fourteen (14) days of receipt the drawings shall be deemed to have been reviewed and the Seller can proceed on the basis of the drawings.

- 10.7 Any drawings, documents, specifications or other technical data, on which the Engineer provides comments shall be modified by the Seller and returned to the Buyer without delay.

The Engineer shall have the right upon prior notice to inspect all drawings produced by the Seller or any Sub-contractor of any part of the Contract Equipment.

- 10.8 The Seller shall provide the Technical Documentation as specified and in accordance with the delivery schedule stated in Annex A 2. Specially the Seller shall deliver the Technical Documentation within the timeframe stated in such Annex under the column “preliminary or

for review” which have a direct impact or are, related to:

- preparing suitable foundations or other means of support, and
- making necessary service connections to the Contract Equipment; and
- the electrical and power datasheets.

10.9 Within the time or times stated in the Contract and particularly in its Annexes or in the Program or Technical Documentation schedule the Seller shall supply any manuals for operating and maintenance and the corresponding assembly and sub-assembly drawings of the Contract Equipment. The operating and maintenance manuals shall be in a comprehensive and functionally structured form that is required to allow comprehensive operation and maintenance of the Contract Equipment and operation of the Contract Equipment during commissioning.

10.10 Drawings and information supplied by the Seller may be used by the Buyer only for the purposes of commissioning, completing, operating, maintaining, adjusting and repairing the Contract Equipment. Commissioning shall not be executed without the presence of Seller’s supervising personnel.

Drawings and information supplied by the Buyer to the Seller for the purpose of the Contract shall remain the property of the Buyer. They shall not, without the consent of the Buyer, be used, copied or communicated to

a third party otherwise than strictly necessary for the performing of this Contract.

- 10.11 Notwithstanding the review by the Engineer of drawings, technical data, specifications or information submitted by the Seller, the Seller shall be responsible for any errors, omissions or discrepancies therein unless they are due to incorrect drawings, technical data or information supplied by the Buyer or the Engineer.

The Seller shall bear any costs he may incur as a result of delay in providing such drawings, technical data or information or as a result of errors, omissions or discrepancies therein.

The Seller shall at his own expense carry out any alterations or remedial work necessitated by such errors, omissions or discrepancies and modify the drawings, technical data or information accordingly.

11 ENGINEER AND ENGINEER'S REPRESENTATIVE

- 11.1 The Engineer shall carry out such duties in issuing certificates, decisions, instructions and orders as are specified in the Contract.

If the Engineer is required, under the terms of his appointment by the Buyer, to obtain the prior specific approval of the Buyer before exercising any of his duties under the Contract, particulars of such requirements will be given in a written notice from the Buyer to the Seller.

- 11.2 The Engineer's Representative shall be responsible to the Engineer and shall watch,

supervise, test and examine any Contract Equipment or workmanship employed in connection therewith. The Engineer's Representative shall have only such further authority as may be delegated to him by the Engineer under this Article 11.

- 11.3 The Engineer may from time to time delegate to the Engineer's Representative any of his duties and he may at any time revoke such delegation. Any delegation or revocation shall be in writing. The Engineer shall furnish to the Seller and to the Buyer a copy of any such delegation or revocation. No such delegation or revocation shall have effect until a copy thereof has been delivered to the Seller.

Any written decision, instruction, order or approval given by the Engineer's Representative to the Seller in accordance with such delegation shall have the same effect as though it had been given by the Engineer.

If the Seller disputes or questions any decision instruction or order of the Engineer's Representative he may refer the matter to the Engineer who shall confirm, reverse or vary the decision in accordance with Article 11.5.

- 11.4 An oral decision, instruction or order from the Engineer shall not be effective until written confirmation thereof has been received by the Seller from the Engineer. The Seller may require the Engineer to confirm in writing any decision, instruction or order of the Engineer, which is not in writing. The Seller shall make such request within two days.

- 11.5 If the Seller disputes or questions a decision, instruction or order of the Engineer he shall do so by giving written notice to the Engineer within 14 days after receiving such decision, instruction or order, specifying the reasons for so doing. The Engineer shall within a further period of 7 days after receipt of the Seller's notice give a written notice to the Seller and the Buyer with reasons, whereby he confirms, reverses or varies such decision, instruction or order.

If within a further period of seven (7) days either the Seller or the Buyer disagrees with such decision, instruction or order as confirmed, reversed or varied either party shall be at liberty to refer the matter to ThyssenKrupp Stainless AG, Duisburg, to settle the matter through consultation between the parties and shall make a decision. In case the differences between the parties cannot be settled, the matter under dispute may be referred to arbitration according to Article 23 of this Contract.

- 11.6 The Buyer shall ensure that an Engineer is appointed to act under the Contract at all times, wherever by the conditions the Engineer is required to exercise his discretion:
- by giving his decision, opinion or consent;
 - by expressing his satisfaction or approval;
 - by determining value,
- or otherwise by taking action which may affect the rights and obligations of either of the parties, he shall exercise such discretion

impartially within the terms of the Contract and having regard to all the circumstances.

The Seller acknowledges that the Engineer may be an employee, servant, agent or representative of the Buyer or the Buyer's consultant.

The Engineer shall act in the interests of the Buyer in the exercise of the functions of the Engineer under this Contract.

12 ASSIGNMENT AND SUBCONTRACTING

12.1 Assignment

The Seller shall not assign the benefit of the Contract in whole or in part or any of his obligations under the Contract without having first obtained the prior written approval of the Buyer. Such approval shall not be unreasonably withheld. A transfer in favor of the Seller's Bankers of any monies due under the Contract, or the subrogation of insurers to the Seller's rights shall not be considered an assignment.

The Buyer has the right at any time upon its sole discretion to assign and transfer all its rights, obligations and benefits out of this Contract to another company belonging in its majority to the ThyssenKrupp AG, Dusseldorf, Federal Republic of Germany, group of companies. The Seller approves already now such assignment and transfer.

In case of such transfer the Seller shall upon written request of the Buyer issue new Standby letters of Credit to the benefit of such other

company for the still outstanding obligations according to the provisions of this Contract against return of the initial Standby letters of Credit. The proven costs of the re-issuance of new Standby letters of Credit will be reimbursed by the Buyer to the Seller.

The Letter of Comfort (Annex K 5) shall be adjusted by the Buyer accordingly.

The Parties agree that said transfer will be effective upon the exchange of the newly issued securities between the Parties

12.2 Sub-Contracting

The Seller shall not subcontract part of the work under the Contract in contradiction to the Sub-contractor list in Annex A 3 Part 2 without the prior consent of the Engineer which shall not unreasonably be withheld.

The Seller shall be responsible for the acts, defaults and neglects of any of the Sub-contractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Seller and/or his agents, servants or workmen.

Seller shall ensure that Sub-contractors comply with the provisions of the Contract, insofar as they apply to the subcontracted Work or to the goods and materials to be supplied. This provision cannot be interpreted as obliging the Seller to contract with its Sub-Contractors/Sub-Suppliers on a back to back basis.

The Seller shall use reasonable efforts to consider services and supplies from companies

based in the State of Alabama under competitive conditions.

13 QUALITY ASSURANCE, INSPECTION AND TESTING

- 13.1 The Engineer shall be entitled, after prior notice, at normal times to inspect, examine and test on the Seller's premises the materials and workmanship and performances of all Contract Equipment to be supplied under the Contract. If part of the Contract Equipment is being manufactured on other premises the Seller shall obtain for the Engineer permission to inspect, examine and test as if the Contract Equipment were being manufactured on the Seller's premises. Such inspection, examination or testing shall not release the Seller from any obligation under the Contract. All expenses of the Buyer to attend such inspections or tests shall be borne by the Buyer.
- 13.2 The Seller shall inform the Engineer the date on, and the place at which, the Contract Equipment will be ready for the tests or inspection as provided in the Contract. The Seller shall provide the Engineer with adequate notice of his intention to perform Tests. The Seller shall forthwith forward to the Engineer complete and duly signed copies of the inspection and test records as outlined in Annex G. If the Engineer does not attend such test and the time and place notified by the Seller, the tests shall be deemed as performed in the presence of the Engineer.

- 13.3 The Seller shall provide free of charge such assistance, labor, materials, electricity, fuel, stores, apparatus and instruments as may be required and as may be reasonably requested and are available in the Seller's workshops to carry out the tests or inspection.
- 13.4 If after inspecting, examining or testing any Contract Equipment it is verified that such Contract Equipment or any part thereof is defective or not in accordance with the Contract, the Engineer may reject the said Contract Equipment or part thereof by giving to the Seller as soon as reasonably practicable notice of such rejection, stating therein the reasons upon which the said decision is based. Following any such rejection the Seller shall make good or otherwise repair or replace the rejected Contract Equipment and resubmit it for the tests or inspection in accordance with this Article.
- 13.5 The Seller shall implement a quality assurance system in accordance with Annex G.
- 13.6 Without prejudice to the Buyer's rights if, in respect of the Contract Equipment not yet delivered, the Engineer has:
- a) verified that work done or materials used by the Seller or by any Sub-contractor is or are defective or not in accordance with the Contract, or that such part is defective or does not fulfill the requirements of the Contract (all such matters being hereinafter in this Article called 'defects'); and

b) as soon as reasonably practicable notified the Seller of the said decision, specifying particulars of the defects alleged and of where the same are alleged to exist or to have occurred,

then the Seller shall without undue delay and at his own expense, make good the defects so specified. Nothing contained in this Article shall affect any contractual claim by the Buyer arising from delay.

14 ERECTION, COMMISSIONING AND ACCEPTANCE

14.1 The awarding and execution of the Erection will be carried out by the Parties in accordance with the Contract and specifically as stipulated under Annex C. The Parties agree that the Buyer shall pay for the Erection to the Seller the proven price(s) agreed upon between the Seller and the Erection company / companies as the case may be (Erection Price) (incl. taxes imposed upon the Seller, if any) and in addition as a handling fee six (6) percent (%) of the Erection Price agreed in the contract with the Erection company at minimum an amount of USD 290,425.00 and at maximum an amount of USD 435.638.00. Upon request by the Seller the Buyer will effect payment directly to the chosen Erection company according to the payment conditions laid down in the respective Erection contract concluded between the Seller and the Erection company, however only after Seller has checked and approved in writing the respective payment documents as laid down in

the Erection contract. The Parties will negotiate with the Erection company with the aim to agree in the Erection contract a direct billing procedure between the Buyer and the Erection company. With every and any such payment the respective payment obligation of the Buyer to the Seller shall be discharged.

- 14.2 The Seller shall submit to the Buyer, not less than two (2) months prior to the planned commencement of Erection as shown in the Contract Program, a detailed activities plan related to Erection as required under Annex F.
- 14.3 Commissioning shall be carried out by the Seller, utilizing the qualified operating personnel of the Buyer, in accordance with Annex C . .

Prior the Commissioning the Seller shall provide the Buyer with the operation and maintenance manuals including procedures, instructions and drawings in bound, indexed, and referenced form, in accordance with this Contract, for the timely Commissioning activities.

The above mentioned manuals shall be submitted to the Engineer for review at the dates set forth in Annex A 2, however, not less than three (3) months before the scheduled commencement of Commissioning as shown in the Annex A2 Part 3.

- 14.4 The Seller shall promptly eliminate defects and correct errors which the Seller is responsible for at his cost during Commissioning and Optimization and ensure the achievement of

the Performance Guarantees as stipulated in Annex B hereto.

- 14.5 The Buyer shall provide free of charge and in due time to the Seller with power and media, raw materials, trained operational and maintenance personnel, as specified in Annex C, for Commissioning and Optimization of the Contract Equipment. Seller and Buyer shall ensure that the management personnel appointed for the erection and during the commissioning and tests of the Contract Equipment is able to speak English.
- 14.6 Regardless of the cause, in case damages occur the Seller shall be obliged to assist the Buyer in replacing or repairing the damaged parts.
- 14.7 In case damages are caused by actions of the Seller's personnel or by wrong instructions of the Seller's personnel or by inferior function of the Contract Equipment, the corresponding expense and charges, thus incurred will be borne by the Seller.
- In case damages are caused due to actions of the Buyer's personnel not following the provisions in the Seller's Technical Documentation and the correct technical instructions given by the Seller's technical personnel, the corresponding expenses and charges, thus incurred will be borne by the Buyer.
- 14.8 After the completion of Erection of the Contract Equipment, the Engineer shall inspect the work with the Seller. When the Engineer states in writing that the Erection is complete, the Engineer shall issue, and the Engineer and

Seller shall sign, an “Erection Completion Certificate” for the Contract Equipment, which shall not be unreasonably withheld for minor defects and/or modifications not affecting safety and operation of the Contract Equipment.

This Certificate shall not release the Seller from responsibilities for the defects of the Contract Equipment found during the subsequent Commissioning, Optimization and warranty period.

- 14.9 After issue of the Erection Completion Certificate the Seller shall conduct Cold Commissioning of every single part of the Contract Equipment as stipulated in Annex C.
- 14.10 After the completion of Cold Commissioning the Engineer shall inspect the Work with the Seller.

After the completion of Cold Commissioning the date of commencing the Hot Commissioning of the Contract Equipment shall be fixed in line with the Contract Program.

Duration, conditions and procedures to realize this Cold and Hot Commissioning are detailed in Annex A 2 and C.

- 14.11 After the completion of Hot Commissioning, and receipt of the Seller’s notice, the Engineer shall inspect the work with the Seller. When the Engineer states in writing that the Hot Commissioning is completed the Engineer shall issue, and the Engineer and Seller shall sign, the “Hot Commissioning Completion Certificate” for the Contract Equipment, which shall not unreasonably be withheld for minor

defects and/or modifications not affecting safety and operation of the Contract Equipment.

This Certificate shall not release the Seller from responsibilities for the defects of the Contract Equipment found during the subsequent Optimization and warranty period.

The Contract Equipment shall not be used for production unless the Hot Commissioning Completion Certificate has been issued. Such use does not constitute an acceptance of the Contract Equipment or of any part thereof. If due to reasons not attributable to the Seller the Hot Commissioning will not have been finalized at the latest twelve (12) months from the date of completion of Erection or fifteen (15) months from the scheduled date of last delivery of the Contract Equipment as stated in Annex A2 part 2, whichever is the earlier, then the Hot Commissioning shall be deemed completed and the Buyer shall be obliged to issue without undue delay the Hot Commissioning Completion Certificate. In case part of the delay is caused by reasons for which the Seller is responsible, the above period shall be extended by the time of delay so caused by the Seller.

The issuance of the Hot Commissioning Completion Certificate accordance with this Article shall not release the Seller from its obligation to perform necessary services with the aim of achievement of Hot Commissioning at a later stage, provided the circumstances prevailing at that time permit the execution of

such services. Additional cost and other conditions for resuming the services shall be agreed upon by the Parties and compensated by the Buyer. It is understood and agreed that the Hot Commissioning may not be achieved after expiry of the envisaged warranty period.

Should the issuance of the Hot Commissioning Completion Certificate be delayed for reasons not attributable to the Seller contrary to the provisions of this Contract, the Hot Commissioning Completion Certificate shall be deemed issued on the eleventh (11th) day after the deemed Hot Commissioning completion date.

- 14.12 Following the issuance of the Hot Commissioning Completion Certificate the Optimization Phase will commence. During the Optimization Phase the Optimization and Acceptance Tests shall be carried out with respect to the performance and quality of the Contract Equipment and process in accordance with Performance Guarantees contained in Annex B.

After the performance of the Contract Equipment and the entire process has stabilized, the commencement date of the Acceptance Tests shall be fixed as mutually agreed between Seller and Buyer.

The Seller shall give notice to the Buyer fourteen (14) days prior to any envisaged Acceptance Test.

The first Acceptance Test shall be completed within three and a half (3.5) months after the

respective Hot Commissioning Completion Certificate for such Contract Equipment has been issued.

The Items and/or Equipment Units to be tested, activities, duration, methods and conditions of the Optimization Phase and the Acceptance Tests are detailed in Annex B.

- 14.13 The Buyer will check and verify each of the Performance Guarantees which shall be achieved in the Acceptance Tests Period in accordance with the Technical Documentation supplied by the Seller and the requirements stipulated in the Annexes to the Contract under guidance of the Seller's technical personnel.
- 14.14 If the Performance Guarantees are fulfilled as stipulated in Annex B, the Contract Equipment is free of defects and outstanding Work under the Contract has been completed, excluding as-built drawings, to the satisfaction of the Engineer, the Certificate of Acceptance of the Contract Equipment shall be set up by the Engineer and signed by the Engineer and Seller within ten (10) days of the last test in 6 (six) originals, 3 (three) for each party, always provided that the Seller has remedied such minor defects or completed modifications originated from Cold and Hot Commissioning to the satisfaction of the Engineer.

The Certificate of Acceptance may be withheld by the Engineer until outstanding defects and modifications have been completed.

The Certificate of Acceptance shall not be unreasonably withheld by the Engineer for

outstanding minor defects/modifications not affecting safety and operation of the Contract Equipment.

- 14.15 If any Acceptance Test fails, or is not completed within the times specified in this Article, the Seller shall make at his own expense necessary repair, replacement and/ or modifications to the Contract Equipment, unless the failure of the Acceptance Test is attributable to the Buyer.

If any Acceptance Test fails or is not completed within the times specified in this Article, for reasons not attributable to the Seller, the Seller is entitled to be compensated by the Buyer for the costs of repeating the Test.

- 14.16 In any instance of failure during an Acceptance Test, up to two further Acceptance Tests shall be carried out if deemed necessary. The Seller shall give notice to the Buyer fourteen (14) days prior to the envisaged further Acceptance Tests. The further Acceptance Test or Tests shall be completed not later than seven (7) months after failure of, or failure to complete, the first Acceptance Test(s).

In case any repair or modification should affect the results of formerly successful tests, the Seller shall repeat even those tests if deemed necessary in the reasonable opinion of the Engineer, in order to comply with Annex B. These repeated tests shall be carried out at no cost to the Buyer regarding the Seller's personnel and other costs resulting from the repetition of the test, with the exception of the cost of production, Buyer's personnel, product,

raw material and production consumables used in carrying out the tests.

- 14.17 If due to reasons not attributable to the Seller any Acceptance Test will not have been finalized at the latest eight (8) months after the date stated in the Hot Commissioning Completion Certificate, or from the date on which the Hot Commissioning Completion Certificate is deemed issued in accordance with Article 14.11, said Acceptance Test shall automatically be deemed completed and accepted and the Certificate of Acceptance shall be issued by the Engineer. In case part of the delay is caused by reasons for which the Seller is responsible, the above period shall be extended by the time of delay so caused by the Seller.

Should the issuance of the Certificate of Acceptance be delayed for reasons not attributable to the Seller contrary to the provisions of this Contract, the Certificate of Acceptance shall be deemed issued on the eleventh (11th) day from the day the last Acceptance Test of the Contract Equipment has been or is deemed to be successfully completed.

The issuance of the Certificate of Acceptance in accordance with this Article shall not release the Seller from its obligation to perform necessary services with the aim of demonstrating the Contract Equipment's capability to achieve the Performance Guarantees at a later stage, provided the circumstances prevailing at that time permit

the execution of such services. Additional cost for resuming the services shall be compensated by the Buyer.

14.18 Not used.

14.19 Not used.

14.20 The Acceptance of the Contract Equipment shall not release the Seller from his obligation to remedy minor defects/modifications mentioned in the Certificate of Acceptance and his responsibility for the Contract Equipment during the warranty period.

14.21 After the Certificate of Acceptance for the Contract Equipment has been issued by the Engineer, the Standby Letter of Credit for the performance covering ten (10) percent of the Contract Price (as per the specimen in Annex K 2) shall be returned to the Seller.

14.22 In case the Acceptance Tests will not be successfully performed according to the provisions of this Contract and its Annexes the Buyer reserves any and all applicable statutory rights.

15. WARRANTIES AND REPRESENTATIONS

15.1 The Seller warrants and represents that:

a) It has obtained and maintains during the term of the Contract all permits, licenses and authorizations necessary to fulfil its obligations under the Contract.

b) the Contract Equipment is in accordance with the state-of-the art at the date of signing of the Contract, unless specified otherwise in this Contract;

- c) the Contract Equipment is free of defects in design, materials and workmanship and in accordance with the requirements of the Contract and its Annexes;
- d) the Contract Equipment is suited for its intended use and complies with the requirements of production processes and safe operation as well as their long-term operation, as specified in the Contract.
- e) the Contract Equipment is designed to obtain products in accordance with the requirements of the Annexes B and E.
- f) the Contract Equipment is in accordance with the Laws in force as of the Effective Date including but not limited to environmental and safety regulations provided however that the provisions of Article 2.2.11 apply accordingly.
- g) with regard to changes to the Occupational Safety and Health and Environmental Laws, the reference date is the date of signing of the Contract. After this reference date, the Parties shall inform each other without undue delay about any changes, which may have a material impact on the Contract Equipment. Both parties shall always observe the relevant Laws and changes thereto.
- h) the Technical Documentation supplied by the Seller is complete and correct, and meets the requirements of engineering and for Erection, operation and maintenance of

Contract Equipment and is in accordance with Annex J;

- i) the Contract Equipment is designed to maintain normal, safe and stable operation and fulfills the Performance Guarantees stipulated in Annex B of the Contract.
- j) the spare parts or adequate substitutes for all parts of the Contract Equipment can be provided by the Seller and purchased by the Buyer for a minimum period of ten (10) years beginning from the Date of Acceptance.

Excluded from this warranty are parts or components subject to abnormal wears and tears as detailed in Annex A3 Part 4, and damages to the Contract Equipment caused by the Buyer resulting among others from wrong or no maintenance or incorrect operation and storage. The Seller shall not be responsible for any defects or damage arising out of:

- the effect of the failure by Buyer to operate the production unit in accordance with the relevant operating manuals, or with the reasonable customary practice,

Any warranty claim must be notified in writing to the Seller within a reasonable time after the Buyer becomes aware of the defect, and include appropriate documentation and data to permit the Seller to ascertain its liability and repair or replace the defective parts accordingly. Seller's representatives shall have access to test and operating records, the equipment, and other information they deem necessary to estimate

the validity of a warranty claim and the appropriate remedies.

- 15.2 In case the Contract Equipment prior to the Date of Acceptance or during the warranty period does not fulfill the Contract specifications or the Contract Equipment is damaged, or otherwise totally or partially disabled or is unable to meet the performance specifications, or reveals any other kind of defect, the Buyer shall notify the Seller and the Seller shall remedy the defects by replacing or repairing the defective Contract Equipment and modifying the technical documentation in the manner – in the reasonable opinion of the Engineer – that the same will insure the quality and performance of the Contract Equipment will meet the specifications.

All the cost for transportation, insurance, import duties, taxes, licenses, repair, replacement and the like arising from the remedy of the defects, and other related expenses shall be borne by the Seller.

For the purposes of fulfillment of its obligations under this Article 15.2, the Seller shall be given access to the Contract Equipment by the Buyer, at times, and for periods that do not cause interference with construction or operation of the plant as determined by the Buyer.

- 15.3 The warranty period for the Contract Equipment shall be as follows:
- a) Twenty four (24) months beginning from the Date of Acceptance with the exception of those Equipment Units or parts thereof

expressly listed in Annex A 3 Part 4 for which the warranty period shall be the one laid down in said Annex. However, should the issuance of the Certificate of Acceptance be delayed, the warranty period commences on the eleventh (11th) day after the last Acceptance Test of the Contract Equipment has successfully been completed.

- b) The warranty period for the Contract Equipment shall end not later than thirty-two (32) months after the date of issuance of the Hot Commissioning Completion Certificate unless Acceptance is delayed due to reasons the Seller is responsible for.
- c) Once the warranty periods of the Contract Equipment have expired, the Buyer shall issue upon Seller's request the confirmation of the expiry of the respective warranty period for the Contract Equipment.

15.4 Not used.

15.5 The warranty period for spare parts shall be thirty six (36) months from date of delivery of the spare parts or twenty four (24) months beginning from installation of the spare parts whichever period is shorter.

15.6 If during the warranty period operation of the plant or of the affected piece of equipment has to be stopped owing to repair/replacement of defective Contract Equipment the warranty period shall be extended for the affected part or the complete Contract Equipment, as the case may be, according to the duration of interruption. The warranty period for replaced

parts of Contract Equipment is twelve (12) months after the completed repair/ replacement but expires not later than 36 months after the commencement of the warranty period according to 15.3 (a).

- 15.7 Should any minor defects to the Contract Equipment occur during the warranty period, the Buyer will consider and has the right to repair such defects at the Construction Site at Seller's cost after written information to the Seller and the Seller's written confirmation.
- 15.8 After the expiry of the warranty period of the Contract Equipment, the Seller shall offer after-sale services to the Buyer. Should any emergent and abnormal conditions be found in the running of Contract Equipment, the Seller shall, at the request of the Buyer, give prompt and effective support to the Buyer at the Buyer's cost.
- 15.9 Should, due to the fault of the Seller, any replacement and/or supplement of Technical Documentation be necessary, the Seller shall deliver free of charge the corresponding replacement and/or supplement parts to the Construction Site.
- 15.10 In case the Buyer is responsible for any defects or damage the Seller shall be obliged to render the Buyer the technical instructions as to eliminate the defects or refurbish the equipment and materials, and the costs incurred there from shall be borne by the Buyer.
- 15.11 Not used
- 15.12 Not used

- 15.13 Excluded from the warranty are major modifications performed by the Buyer without authorization of the Seller.
- 15.14 The Seller shall make good any defects in the Contract Equipment during the warranty period for which the Seller is responsible.
- 15.15 However, it is expressly understood and agreed that the term “Performance Guarantee” and other similar terms, including the verb “to guarantee”, are not to be considered as giving a guarantee within the meaning of Sections 443, 444 and 639 German Civil Code (“Beschaffenhheits-” and/or “Haltbarkeitsgarantien”) but only as a warranty commitment with the legal consequences set forth under Sections 437 and 634 German Civil Code. Sections 444 and 639 German Civil Code are hereby expressly excluded.

16 SELLER’S AND BUYER’S DEFAULT

- 16.1 If the Seller is in material breach of his obligations under the Contract including, but not limited to:
- a) assigning the Contract without Buyer’s prior approval, or
 - b) sub-letting all or part of its obligations without prior approval by the Buyer, or
 - c) failing to make good, repair or replace any non-conforming Contract Equipment or part thereof, within a reasonable time after being notified by the Engineer, or
 - d) delays in performing the Works by more than 6 months

e) suspending without excuse the performance of the Contract for a period exceeding seven (7) days after receiving from the Engineer written notice to proceed,

then the Buyer may give fourteen (14) days notice to the Seller to remedy the default.

If such notice expires and the Seller has not commenced to remedy the default in a substantial manner, the Buyer may without prejudice to any other remedy under the Contract forthwith terminate the Contract, or part thereof, as the case may be, but without thereby releasing the Seller from any of his obligations or liabilities which have accrued under the Contract and without affecting the rights and powers conferred by the Contract on the Buyer.

Upon such termination the Buyer may himself complete the Contract Equipment, in which event the Seller shall provide access and handover the Contract Equipment in its then state to the Buyer or as the Engineer may direct.

16.2 As soon as practicable after the Buyer has terminated the Contract, according to Article 16.1, the Engineer shall, by or after reference to the Parties and after making such inquiries as he thinks fit, evaluate the value of the work performed by the Seller as of the date of termination. The amount so determined is herein called “the Preliminary Termination Value”, which the Engineer shall submit to the Buyer and the Seller for amicable settlement

between the Parties. If such settlement will not be reached within thirty (30) days the issue shall be referred to arbitration unless extension of this period is mutually agreed between the Buyer and the Seller.

- 16.3 The Buyer shall not be obligated to make any further payments to the Seller for the Works already performed and determined as the Preliminary Termination Value until a third party has been engaged to perform the outstanding Work and all expenses to be incurred by the Buyer have been ascertained, and such amount has been certified with supporting documentation by the Engineer (herein called “the Cost of Completion”).

If the Cost of Completion when added to the total amounts already paid to the Seller, as at the date of termination, exceeds the Contract Price, the Engineer shall certify such excess and the Seller shall upon demand pay to the Buyer the amount of such excess, however limited to fifty (50)% of the Contract Price. Any such excess shall be deemed a debt due by the Seller to the Buyer and shall be recoverable within thirty (30) days after the invoice is issued by the Buyer. If there is no such excess the Seller shall be entitled to be paid the difference (if any) between the Preliminary Termination Value and the total of all payments received by the Seller as at the date of termination within thirty (30) days after the invoice is issued by the Seller.

- 16.4 If either Party becomes bankrupt or insolvent, or has a title made against him, or compound with his creditors, or commences to be wound up, not being a members' voluntary winding up for the purpose of amalgamation or reconstruction, or have an administration order made against him or carry on his business under an administrator or a receiver or manager for the benefit of his creditors or any of them, the other party shall be entitled:
- a) to terminate the Contract forthwith by notice to the party concerned or to the receiver, manager, administrator or liquidator or to any person in whom the Contract may become vested, in which event the provisions of Article 16 shall apply; or,
 - b) to give such receiver, manager, administrator or liquidator or other person the option of carrying out the Contract subject to his providing a guarantee for the due and faithful performance of the Contract up to an amount to be agreed.
- 16.5 If the Buyer
- Fails to pay the Seller any due amount within 60 days after the respective payment date,
 - Suspends the execution of the Contract for a period exceeding 6 months,
- the Seller may terminate the Contract by giving a notice to the Buyer. Such notice shall take effect 14 days after the giving of such notice.

17 LIABILITIES

17.1 From the Effective Date until the warranty period (as per Clause 15.3) expires, the Seller shall be responsible for the proper execution of his obligations under the Contract. After the Date of Acceptance, the Seller shall remain responsible for the care of outstanding work under the Contract and items to be removed from the Construction Site by the Seller and shall be liable for damage occasioned by the Seller in performing his warranty period obligations.

The Seller shall be responsible for the care of the Contract Equipment or any Section thereof until end of Hot Commissioning in accordance with the Contract, and the risk of loss shall be Seller's until the end of Hot Commissioning. In the event that any part of the Contract Equipment shall suffer loss or damage whilst the Seller has responsibility for the care thereof, the same shall be made good by the Seller.

Without limiting the generality of the Seller's obligations, the Seller shall be responsible for:

- a) the care of equipment, components, tools, etc. entrusted or provided to the Seller by the Buyer or the Engineer for the purpose of or in connection with carrying out the Work under the Contract, whether on or off Construction Site;
- b) working equipment, components, tools, etc. brought onto the Construction Site by the Seller or Seller's Sub-contractors for the Work under the Contract; and

- c) the Contract Equipment while in the care of the Seller; and
- d) working equipment and tools provided by the Buyer when used by the Seller.

This clause shall not be interpreted as preventing the Seller to make a claim against any the party (including the Buyer and or the Engineer) which is responsible, in whole or in part, for such damage.

- 17.2 In the event that any part of the Contract Equipment suffers loss or damage while the Seller has responsibility for the care thereof, the same shall be made good by the Seller.
- 17.3 Seller shall be liable to Buyer for any, loss of or damage to third party tangible property (including Buyer's property other than the Work insured under 19.2) and for death of or injury to persons, including but not limited to employees and agents of Seller, caused by any acts and/or omissions of Seller in the performance of the Contract, and Seller shall indemnify and hold Buyer harmless against and from any and all claims or costs asserted against Buyer by third parties in consequence thereof. Seller shall be liable for all such acts and/or omissions of Sub-contractors or other third parties whose services and/or supplies Seller uses in the performance of this Contract in the same way as for Seller's own negligent acts or omissions.
- 17.4 Notwithstanding anything to the contrary contained in this Contract and its Annexes or elsewhere, neither Party shall be liable to the

other Party for any consequential, special damages and/or indirect damages, expenses, or losses such as loss of profit, loss of production, loss of goodwill, downtime cost, financing costs and the like unless caused by willful acts or through gross negligence.

- 17.5 In case damages are caused by actions of the Seller's personnel or by wrong instructions of the Seller's personnel or by incorrect function or malfunction of the Contract Equipment, the corresponding expense and charges thus incurred shall be borne by the Seller.

In case damages are caused due to actions of the Buyer's personnel not following the provisions in the Seller's Technical Documentation and the correct technical instructions given by the Seller's technical personnel, the corresponding expenses and charges thus incurred shall be borne by the Buyer.

- 17.6 The maximum liability of the Seller with respect to incorrect or incomplete engineering, advice or information provided by the Seller to assist the Buyer or other contractors engaged by the Buyer, not related to the Contract Equipment, is limited to a maximum of 5% of the Contract Price.

- 17.7 The Seller's overall liability (with the exception of any warranty and claims for consideration as per Article 18, liability for death or personal injury and property damages, and Article 2.2.13) under or in connection with this Contract, whether arising out of a breach of this Contract, tort including (but not limited to)

negligence or of statute or otherwise, shall in the aggregate be limited to fifty percent (50%) of the Contract Price.

- 17.8 For the avoidance of doubt, it is expressly agreed that any cost and risk resulting from: (i) the non availability / shortage of manpower for erection, (ii) a conflict between the Erection Subcontractor and its employees, in connection with the labor forces and (iii) a conflict between the Erection Subcontractor and other contractors, in connection with the labor forces, shall be borne by the Buyer.

The Seller shall not incur any liability arising out of a failure to find out a sub-contractor for the erection work acceptable to the Buyer and the Seller and / or to conclude a contract with such sub-contractor.

**18 CONSIDERATION FOR DELAY, UNDER-
AND NON-PERFORMANCE**

18.1a NOT USED

- 18.1b If the date of completion of Hot Commissioning as stated in the Hot Commissioning Certificate is beyond the date nominated in the Schedule of Milestones (Annex A2 Part 2.1), due to reasons attributable to the Seller or Sub-contractors, the Seller shall pay the Buyer a consideration for such delay at the following rates:

One point one percent (1.1%) of the Contract Price for each full week of delay up to a maximum of seven point five percent (7.5%) of the Contract Price.

The Seller is not responsible for a shortage of labor during the erection.

18.1c NOT USED

18.2 If the Technical Documentation, marked with a "P" in the Technical Documentation Schedule in Annex A2 Part 3, has not been delivered at the dates nominated in this schedule, due to reasons attributable to the Seller or Sub-contractors, the Seller shall pay the Buyer a consideration for such delay in delivery at a rate of zero point zero five (0.05) % of the Contract Price for each commenced day of delay. The maximum consideration for the delivery of Technical Documentation shall not exceed one (1) % of the Contract Price.

18.3 The maximum consideration for delay under 18.1 and 18.2 shall be limited to seven point five percent (7.5%) of the Contract Price.

18.4 The payment of the consideration for delay of Hot Commissioning shall not release the Seller from his obligations to commission the Contract Equipment under this Contract.

18.4 a If the under-performance of the Performance Guarantees is less than those stipulated in Article 18.5, the Buyer shall have the right either to

a) direct the Seller to take all action at the Seller's cost, including replacement of the under-performing parts of the Contract Equipment up to the total replacement of the under-performing Contract Equipment, to make the Contract Equipment reach the Performance Guarantees and/or statutory

requirements as stipulated in Article 18.5,
or

- b) claim a consideration, in which case the consideration scheme as stipulated under Article 18.5 shall apply.

18.5 Should one or more of the Performance Guarantees as set forth in Annex B Part 6.2 hereto, are not achieved at the expiry of the extended period of seven (7) months after the failure of the first Acceptance Test, however not later than ten (10) months after the Hot Commissioning has been completed, and thus Buyer cannot reasonably expect the completion of the Acceptance Test(s), the Seller shall upon Buyer's request pay considerations, applied accumulatively, at the following rates up to a maximum of seven point five percent (7.5%) of the Contract Price:

- a) Guaranteed Production Rates

One and half percent (1.5)% of the Contract Price if any of the proven production rates is below the specified value. However, in all cases the proven production rates shall not be less than 90% of the specified value for Contract Equipment acceptance.

- b) Guaranteed Availability

If the proven availability is:

- Less than 97% but minimum 96%; then point five percent (0.5 %) of the price of the Contract Equipment; or,

- Less than 96% but minimum 95%; then one percent (1.0%) of the price of the Contract Equipment; or,
- Less than 95% but minimum 94%; one point five percent (1.5%) of the price of the Contract Equipment; or,
- Less than 94% but minimum 93%; two percent (2.0%) of the price of the Contract Equipment; or,
- Less than 93% but minimum 92%; two point five percent (2.5%) of the price of the Contract Equipment.

In the case the proven availability is lower than 92% the Contract Equipment may not be accepted.

c) Guaranteed Service or Set-up Times

One percent (0.5%) of the price of the Contract Equipment per each service or set-up time which is proven to be above the specified value.

However, every proven service and/or set-up time shall not be greater than 130% of its specified value.

d) Guaranteed Production Start-up Curve

Two point five percent (2.5%) of the price of the Contract Equipment if the proven achieved production percentage is lower than 100% after one month after the end of the start-up period stated. However, the proven achieved production percentage shall be greater than 95% for Contract Equipment acceptance.

e) Guaranteed Process and Operational Values

Zero point five percent (0.5%) for each proven process and operational value which does not meet the specified value, up to two percent (2.0%) of the price of the Contract Equipment.

f) Guaranteed Noise Levels

If the proven noise level of an Equipment Unit stated in Annex B Part 6.2 is greater than the limit value set forth in the standard specification "Noise Level and Abatement Systems" included in Annex D; then, clause 18.6 shall be applied.

18.6 If any other Performance Guarantees than the above mentioned Performance Guarantees above is not achieved, the Contract Equipment shall be made good by the Seller at its own costs within the times mutually agreed by the Engineer and the Seller until the respective Performance Guarantees are met.

18.7 NOT USED

18.8 NOT USED

18.9 In the event the Buyer claims the final consideration for under-performance of a Performance Guarantee stipulated under Clause 18.5 above, the Buyer shall forthwith release the Seller from his further obligation to make good the Contract Equipment related to such Performance Guarantee, and consequently the Certificate of Acceptance shall not be denied by the Buyer for reasons of this under-performance.

- 18.10 If the Seller fails to rectify a substantial under-performance of one of the Performance Guarantees beyond the limits set forth in Annex B (in accordance with Article 18.4a) ('non-performance') and following formal notification from the Engineer to the Seller and after a further period of two (2) weeks the Buyer may execute his statutory rights.
- 18.11 The Seller shall pay the considerations to the Buyer within thirty (30) days after receipt of Buyer's written notice.
- 18.12 If the Seller fails to pay any monies due to the Buyer, the Buyer may deduct from any monies, which may be, or become, payable to the Seller and/ or may take recourse to the Standby Letters of Credit.
- 18.13 All payments by the Buyer for Acceptance are made conditional on satisfaction of any payments of any consideration.
- 18.14 Non reservation of any claim for consideration by the Buyer does not constitute a waiver of such claim.
- 18.15 Payment of a consideration pursuant to this Article constitutes the final remedy for the respective item, with the exception of the Buyer's rights set forth in Articles 2.2.12, 4.3, 4.4 and 16.
- 18.16 The cumulated sum of payments under 18.1.b and 18.5 shall not exceed ten percent (10%) of the Contract Price.

19 INSURANCE

19.1 Seller's insurances

19.1.1 Seller shall take out and maintain or shall procure for the Work the taking out and maintenance of the following insurances which must be legal and valid in all countries where the Work is performed, and which shall remain in force for as long as Seller has any relevant obligations under the Contract:

- a) adequate insurance covering loss of or damage to construction equipment of Seller which has been brought to the Construction Site and that of its personnel, Sub-contractors or other agents of Seller, against losses of all kinds, for as long as such property of Seller, its personnel, Sub-contractors or other agents remains on Buyer's premises for the purposes of performance of Seller's obligations under this Contract. An insurance from a third party (for example construction company) for the construction equipment is acceptable,,
- b) adequate third Party Liability Insurance covering legal liability of Seller to third parties of physical loss or damage, death or bodily injury incurred by them arising out of the performance of the Work; with a combined single limit of not less than USD fifty million (50,000,000) per occurrence and USD fifty million (50,000,000) per year. These limits apply to all Contracts together

Seller has with Buyer for the entire project at Mount Vernon, Alabama,

- c) adequate Automobile Liability Insurance against claims by third parties in respect of loss, damage, death or bodily injury incurred by them arising out of or in connection with the use of owned, leased, non-owned and hired motor vehicles used for performance of the Work by Seller or Sub- contractors or other agents of Seller; if applicable adequate waterborne and airborne craft liability insurance for owned, non-owned or hired craft that are used for performance of the Work by Seller or Sub-contractors or other agents of Seller, covering liabilities arising from the use and/or operation of the waterborne craft (including floating construction equipment) or the airborne craft (as the case may be) in the care, custody or control of Seller or any Sub-contractor, including liability for damage due to collision, pollution and removal of wrecks,
- d) adequate workers' compensation, employers' liability insurance or any other insurance as required by the applicable laws wherever the Work is to be performed and wherever the contracts of employment of Seller or Sub-contractors or other agents of the Seller's personnel are made or expressed to be made. Under no circumstances, Buyer shall be liable for any lack of adequacy of such insurance and Seller shall hold Buyer harmless in respect of any claims for

damages of injured person(s) of Seller, its Sub-contractors or other agents of Seller,

- e) adequate marine and transport insurance for any equipment and materials and construction equipment procured by Seller or Sub-contractors or other agents of Seller until arrival to the Construction Site as per institute Cargo Clauses (A). A transport insurance from a third party (for example freight company) for the transport of the equipment is acceptable.
- f) any other insurance which the Seller is required to take out under the applicable laws.

19.1.2 In respect of the insurances which Seller is required to procure or have procured under Article 19.1, Seller shall ensure that:

- a) evidence of the respective insurance in the form of certificates of insurance is provided to Buyer within thirty (30) days from Effective Date [or from such time as is appropriate in respect of the risks to be insured].
- b) all insurance relevant incidents regardless of whether such an incident is covered by insurance or not shall be promptly reported to Buyer.
- c) all insurances shall be effected with financially sound and reputable insurers, i.e. at least A-rated according to generally accepted international rating standards such as A.M. Best, Standard and Poors etc.

- d) no material alterations to the disadvantage of the Buyer in form and content of the terms of any insurance shall be made without at least thirty (30) days prior written notice to the Buyer. The same applies to cancellation or expiration of cover, except in connection with yearly renewals..
- e) Sub-contractors present at the Construction Site meet their respective obligations as referred to in this Article.
- f) all insurances contain a waiver of subrogation against Buyer and to name Buyer as an additional insured for claims made against the Buyer caused by any acts and/or omissions of Seller in the performance of the Contract as far as possible under relevant Laws.
- g) all insurances are kept fully valid to the extent relevant from time to time for the duration of Seller's performance of its obligations under the Contract.

19.2 Buyer's insurance

19.2.1 Buyer shall provide and maintain at its expense a Construction-Erection-All-Risks-Insurance (Builders Risk Insurance). Seller shall be responsible for the respective deductibles in case a damage is caused by the Seller.

19.2.2 A summary of the insurance policy to be taken out by Buyer pursuant to Article 19.2.2.1 is attached as Annex L.

19.3 Optional Owner Controlled Insurance Program

19.3.1 Buyer may elect to implement a Buyer controlled insurance program (OCIP) that will provide Workers' compensation, Employer's Liability, General Liability and Excess Liability Insurance for Seller and all eligible Sub-contractors of every tier providing direct labor on the Construction Site. Buyer would pay all premiums associated with the OCIP including deductibles or self-insured, retentions.

19.3.2 In the event the Buyer elects to implement an OICP, Seller will identify for Buyer the actual cost to obtain the coverages specified above for the Work as applicable to Seller and each of its Sub-contractors and Sub-suppliers of whatever tier. Seller will identify such costs as line items on the bid documents provided under this Contract and will include:

- (a) Premium index estimate (payroll, receipts, subcontract cost, or other basis)
- (b) Applicable rates, discounts, and deductibles
- (c) Estimated premiums
- (d) Contingency factors and amounts included for deductibles or self-insured retentions
- (e) Itemization of overhead and profit

Buyer will have the right, but not the obligation, to procure comparable coverage and limits, and, if Buyer so elects, a deductive Variation for Seller's actual cost of such insurance will be issued in accordance with the terms of this Contract. To the extent that Buyer

provides coverage specified in this Contract, that coverage will apply only to Work performed at, or emanating directly from, the Project site. Seller and each Sub-contractor and sub-supplier to whatever tier will remain obligated to provide the type and limit of that coverage for all other operations of Seller and each Sub-contractor and sub-supplier to whatever tier excluding only operations performed in connection with work at the Project site.

Furnishing any insurance specified in this Contract by Buyer will in no way relieve or limit any responsibility or obligation imposed by this Contract on Seller or any Sub-contractor and sub-supplier to whatever tier. In addition, the Buyer-provided insurance will not apply to vendors, suppliers, material men, and others who merely transport, pick up, deliver or carry materials, personnel, parts, equipment, or any other items or persons to or from the Project site. Buyer makes no representations, guarantees, or warranties, express or implied, as to the fitness and/or quality of coverage.

- 19.3.3 A summary of the insurance policy that may be taken out by Buyer pursuant to Article 19.3.1 is attached as Annex L.
- 19.4 Subject to the provisions of Article 19.1 and Annex L it shall be expressly understood that the taking out of any insurance shall not relieve Seller or Sub- contractors or other agents of Seller of any liability arising out of the Contract or of applicable Laws.

20 INTELLECTUAL PROPERTY

- 20.1 All Intellectual Property in all Intellectual Property Items shall vest in the Buyer or Seller as the case may be, on creation of the Intellectual Property Items.

Herewith the Seller grants to the Buyer the non-exclusive, non-transferable irrevocable right to use the drawings, documents, data, equipment-related know-how and experience, patented and/or not-patented technical knowledge, received from the Seller under this Contract for the purpose of operating and maintaining the Contract Equipment. This right includes the unencumbered right to sell the products manufactured with the Contract Equipment to the clients of the Buyer.

- 20.2 Seller warrants that the Contract Equipment and/or use thereof does not and will not infringe any patents or other intellectual property rights of any third party whether within or outside the United States. Seller agrees at its option (i) modify or replace the infringing equipment or part by a non infringing equipment or part, to the extent that such modification or replacement does not diminish the performance of the Contract Equipment (ii) to indemnify, defend and hold harmless the Buyer and its affiliates from all claims alleging violation or infringement of any Intellectual Property rights of any third party or other proprietary right relating to Contract Equipment provided by Seller, or any alleged improper disclosure or use of any trade secret arising from the

manufacture, use or sale of any goods delivered as a result of this Contract except if they are made to Buyer's specifications. This indemnity is given upon the condition that the Buyer shall promptly notify the Seller of any claim, suit and/or proceeding in which such infringement is alleged, shall permit the Seller to control the defence or compromise of any such allegation of infringement and shall render such reasonable assistance at the Seller's cost and expense in the defence thereof as the Seller may require.

- 20.3 Drawings prepared by the Seller, including Sub-contractors and supplied to the Buyer as part of this Contract shall become the property of the Buyer, without prejudice to the intellectual property rights of the Seller in the frame of the rights of the Buyer laid down in Article 10.10.
- 20.4 Software licenses, applicable and within the Seller's scope of supply, are deemed to be included in the Contract Price. The use of the delivered software or part thereof is strictly limited to the system for which they are intended. Software can only be copied and used on other CPUs with the prior consent of the Seller in the event of failure or interruption of the CPU.

The copying of software other than for backup reasons is subject to the Seller's written approval under consideration of copyright of the original and all copies. Copies of such software may only be produced on a CPU to be approved by the Seller. Software shall not be made

accessible to any third party by the Buyer without prior approval by the Seller.

All software rights remain with the Seller. Application source programs and supervision software form part of the scope of supply by the Seller, as stated in Annex C. Should the Buyer, without the prior written consent of the Seller amend such source programs, then the Seller shall not be liable for any consequences thereof.

21 CONFIDENTIALITY

21.1 For a period of ten (10) years from the Effective Date the Buyer shall keep confidential the Technical Documentation inclusive of any information relating to the technical knowledge and patented technologies associated with the Contract Equipment except for:

- a) third parties engaged in project work, maintenance, operation and manufacturing of spare parts which shall be subject to the same confidentiality; or,
- b) the Buyer being already in possession of the technologies which are identical with the above mentioned Technical Documentation; or,
- c) the Buyer having already obtained the above mentioned Technical Document from other sources under no secrecy obligation, prior to obtaining the Technical Documentation from the Seller; or,
- d) the technical knowledge becomes known to the public through no fault of the Buyer; or,

e) any requirements by the law to disclose such Technical Documentation.

21.2 The Seller shall keep confidential information provided by the Buyer or resulting from the activities of the Seller pursuant to the Contract for a period of ten (10) years, except for:

a) sub-contractors, sub-suppliers, banks and insurance companies engaged in the Work which shall be subject to the same confidentiality; or,

b) the Seller being already in possession of the technologies which are identical with the above mentioned information; or,

c) the Seller having already obtained the above mentioned information from other sources under no secrecy obligation, prior to obtaining the information from the Buyer; or,

d) the technical knowledge becomes known to the public through no fault of the Seller; or,

e) any requirements by the law to disclose such information..

21.3 The Seller and Buyer shall treat the details of the Contract and any information made available in relation thereto as confidential and neither of them shall publish or disclose the same or any particulars thereof (save insofar as may be necessary for the purposes of the Contract), without the previous consent of the other provided that nothing in this provision shall prevent the publication or disclosure of any such information that has come within the

public domain otherwise than by breach of this Article, or which is required to be disclosed by the Law (provided, however, if such event, the recipient agrees to use reasonable efforts to provide the disclosing party with written notice of such potential disclosure, and provide the disclosing party with a reasonable opportunity to secure the confidential protection thereof).

22 TAXES AND DUTIES

21.1 Seller, and its Sub-contractors, shall bear and pay on its own expense any taxes, fees, duties, contributions and other charges levied inside or outside the United States in connection with the performance of the Work, including, but not limited to:

- a) net worth, business, sales and use, value added, excise, storage, stamp duty and consumption taxes; licenses, permit and registration fees; and income, profit, remittance, franchise and property taxes;
- b) employment taxes and contributions with respect to or measured by compensation (wages, salaries or other) paid to employees of Seller, and its Sub-contractors, including, but not limited to, taxes and contributions for unemployment compensation insurance, old age benefits, welfare funds, pensions and annuities and disability insurance; and
- c) export and import taxes, Customs duties, license fees and other charges levied on the Import Portion of the Contract Equipment.

22.2 Under the following circumstances and if Buyer provides Seller with a valid abatement

certificate (Form STE-2 Sales and Use Tax Certificate of Exemption) for the project, no sales, use or any other tax will be added to the Contract Price :

- a) Under Alabama law, to the extent that Seller, and its Sub-contractors, are treated as a contractor with respect to the Work, said Seller and its Sub- contractors will be treated as the taxpayer and thus will be responsible for any state or local sales, use and other taxes related to the Work. Seller shall directly pay when due all Mobile County non-abated sales and use tax imposed and applicable to the Seller's performance of the Work and this Contract. Likewise, each Sub-contractor shall directly pay when due all Mobile County non-abated sales and use tax imposed and applicable to the Sub-contractor's performance of the Work and this Contract.
- b) In all other circumstances, if the Buyer provides Seller with a direct pay permit acceptable to the relevant governmental authorities, neither Seller nor any Sub-contractor shall include any allowance or amount for State of Alabama or local sales and use tax payment in calculating any payments due, by application for payment, Variation or otherwise in connection with the performance of the Work and/or the provision of the Contract Equipment.
- c) If no valid abatement is provided by the Buyer, the sales tax, the use tax and other

applicable tax will be added to the Contract Price.

- 22.3 Buyer will be issued a Form STE-2 Sales and Use Tax Certificate of Exemption for the Project. To the extent applicable, Seller shall, and shall cause all of its Sub-contractors to, submit an application for a Form STE-2 Sales and Use Tax Certificate of Exemption to the Alabama Department of Revenue, along with a written confirmation, to be provided by Buyer, stating that Seller, and/or its Sub-contractors, will be making purchases of tangible personal property to be incorporated into the Project. See Annex O to this Contract for more specific information regarding the tax abatement procedure.
- 22.4 In addition to any information contained in the Annexes to this Contract, Seller, and its Sub-contractors, shall have the responsibility to become knowledgeable of and adhere to the rules and regulations of the State of Alabama and Mobile County regarding the abatement of sales and use taxes and all other taxes.
- 22.5 Buyer is required to obtain correct taxpayer identification numbers from all non-corporate payees who receive payment for services, rents, royalties or interest that would be subject to IRS Form 1099 reporting. Twenty percent (20%) back-up tax withholding will be imposed on all Form 1099 reportable payments made to Seller if Seller fails to provide a correct taxpayer identification number.

- 22.6 Buyer shall be entitled to withhold from any payments to the Seller such taxes as may be required by the applicable law, including, without limitation, withholding tax on income and royalties. Upon the Seller's request, the Buyer shall furnish evidence of payment of such withholding taxes to the Seller. The Buyer has the right to withhold payments for any deliveries/services performed in the United States until the original tax receipts for such payments have been presented by the Seller to the Buyer.
- 22.7 Seller shall defend, indemnify and hold Buyer harmless from and against all liability for all duties, sales, use and other taxes and charges for which the Seller is responsible and which are imposed on or with respect to, or are measured by, the amounts expended by Seller for the Work furnished hereunder, and the wages, salaries, and other remunerations paid to persons employed in connection with performance of the Work.
- 22.8 Seller shall make itself aware of the requirements of new Chapter 40-18-73A of Title 40 of the Code of Alabama (1975) entitled the "Provisional Employer Withholding Act." To the extent applicable, Seller and its Sub-contractors shall comply in all manners with the provisions of said Act.
- 22.9 Seller shall include, in all of its contracts with Sub-contractors, a provision similar to this Section 22.

22.10 Seller shall provide any and all tax related documents and forms which are required by any Law to be obtained by the Buyer from the Seller in connection with any payments made pursuant to the Contract.

23 APPLICABLE LAW AND ARBITRATION

23.1 All disputes arising between both parties in connection with or in the performances of the Contract shall be settled through friendly consultation between both parties. In case no agreement can be reached through consultation after a maximum period of 30 days or as soon as one of the parties involved appeals for the arbitration tribunal the dispute shall be considered as failed and any such dispute shall be submitted to arbitration for settlement.

23.2 The arbitration shall take place in Dusseldorf, Germany, and shall be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce, Paris, (ICC Rules) in the English language by three arbitrators appointed in accordance with said rules.

23.3 The award given by arbitration shall be final and binding and both parties shall abide by such award.

23.4 Any costs and charges of arbitration shall be borne by the losing party, except as otherwise decided by the arbitration.

23.5 The substantive law of Federal Republic of Germany shall apply under exclusion of the UN Convention of Contracts for the International Sale of Goods.

23.6 In the course of arbitration the Contract shall be executed continuously by both parties except for those claims under arbitration.

24 FORCE MAJEURE

24.1 Neither the Buyer nor Seller shall be held liable for non-fulfillment of their obligations under the Contract if the non-fulfillment of these obligations is due to war (whether declared or not), hostilities, revolution, civil disturbances, riots, strikes, or due to any law, order, regulation or ordinance of any competent authority, act of God or similar causes, like hurricane, tornado, earthquake and similar nature catastrophes, beyond the control of the affected party (but does not include lock-out, shortage of labor, lack of or inability to obtain raw materials, fuel or supplies, unless caused solely by priorities, restrictions or allocations imposed by governmental authority). The foregoing shall not be considered a waiver of either Party's obligations under Contract.

24.2 Each of the Parties shall make every reasonable effort to shorten the delay arising from Force Majeure. Upon cessation or removal of such events of Force Majeure, both Parties shall promptly continue their respective obligations hereunder.

24.3 If an event of Force Majeure prevents either Party from carrying out its obligations under the Contract, the Party affected shall, within seven (7) working days of the date on which the Party affected becomes aware of the event, notify the other Party thereof.

- 24.4 If the Force Majeure situation continues for thirty (30) days or less, the Party affected as above shall be entitled to an adequate extension of time for fulfilling its obligations and the other Party shall not claim in respect of loss incurred by reason of Force Majeure.
- 24.5 If, after thirty (30) days from the date of giving the aforesaid notice, the notifying Party is still prevented, for reasons beyond its control, from performing its obligations under Contract, the Parties shall consult one another with a view to determining what action is appropriate under the circumstances.
- 24.6 If, after one hundred and eighty (180) days from the date of giving of the aforesaid notice, the notifying Party is still prevented, for reasons beyond its control, from continuing to perform its obligations under Contract, then either Party shall be entitled to terminate the Contract under the provisions of the Contract.
- 24.7 In the event of termination of Contract for Force Majeure the Buyer shall pay the Seller for all work executed or respectively Seller shall pay the Buyer all amounts of payments effected to Seller for Work not performed prior to the date of termination at the rate and prices provided in Contract or on a pro-rata basis if not so provided and, in addition, the amount of any costs properly incurred by the Seller arising out of or in connection with such termination. Such payment shall be made to within sixty (60) days after the agreement on the respective amounts has been reached.

24.8 In the event of termination, the Seller shall immediately assign to the Buyer, or to the extent required by the Buyer, all work done, rights and title held by Seller relating to the Contract.

25 NOTICES

25.1 Any notice to be given to the Buyer or to the Engineer under the Contract shall be served by sending the same by mail with proof or receipt, fax or email to, or by leaving the same at, the legal addresses nominated for that purpose mentioned in this Contract.

25.2 All certificates, notices or decisions instructions and orders to be given by the Engineer or the Buyer under the Contract will be served by sending the same by regular mail, fax or email to, or by leaving the same at, the Seller's principal place of business or the legal address given in this Contract, or such other address as the Seller shall nominate for that purpose.

25.3 Any notice sent by fax or email transmission shall be deemed to have been served at the time of transmission. A notice sent by regular mail with proof or receipt shall be deemed to have been served four days after posting.

25.4 Wherever in this Contract provision is made for the giving of notice or consent by any person, unless otherwise specified such notice or consent shall be in writing and the word 'notify' shall be construed accordingly. Unless specifically so stated any consent required of a party or the Engineer shall not be unreasonably withheld.

26 TERMINATION FOR CONVENIENCE

26.1 At any time for any reason, the Buyer may terminate by written notice any part, or the whole, of the Work under the Contract. Upon receipt of a prior 15 days notification by the Seller, this Contract or the part concerned shall be terminated automatically.

In case of such termination,

- a) the Seller shall discontinue all work under progress;
 - b) the Seller is obliged to inform the Buyer without undue delay in writing regarding incurred expenses as per 26.2 below;
 - c) Seller's above-mentioned expenses are to be offset against the payments already made under the Contract. If such payments exceed such expenses, the difference thereof, if any, shall be paid immediately to the Buyer against return of the contract related Guarantee(s), as the case may be, to the Seller;
 - d) comply with any directions by the Engineer, including, without limitation and to the extent directed to:
 - i. protect property in the possession of the Seller in which the Buyer has or may acquire an interest;
 - ii. demobilize from the Construction Site persons, constructional plant, vehicles, equipment etc;
- 26.2 Subject to the Buyer's rights under or in connection with the Contract, including without

limitation the rights to withhold or set-off payment and recovery of contractual damages, the Buyer shall pay the Seller:

- a) expenses and work such as engineering and design work executed prior to the date of termination;
- b) costs such as commissions for bank guarantees, bank fees and charges, etc. insurance premiums
- c) the cost of materials ordered by the Seller for the work under the Contract, which the Seller is legally liable to accept. Property of such material shall be transferred to the Buyer upon payment;
- d) retention, if any;
- e) reasonable costs of demobilization;
- f) the reasonable costs of complying with any directions given by the Engineer upon or subsequent to termination;
- g) reasonable amount of overhead and profit.

26.3 The Buyer shall not otherwise be liable to the Seller for any cost, loss, expense or damage incurred by the Seller as a consequence of, or in connection with, the Contract, the work under the Contract or a termination under this Article.

26.4 All securities/performance bonds issued by the Seller's bank shall cease to have effect and will be immediately returned to the Buyer.

27 VARIATIONS

27.1 The Seller shall not vary the work under the Contract except as directed in writing by the Engineer.

27.2 The Engineer may during the execution of the Contract direct the Seller in writing to do one or more of the following:

- a) Change the engineering;
- b) Change the Contract's requirements to be satisfied by the engineering, documentation, work under the Contract, or the Work;
- c) Increase, decrease or omit any part of the work under the Contract;
- d) Change the character or quality of any material or work;
- e) Change the levels, lines, positions or dimensions of any part of the work under the Contract;
- f) Execute additional work;
- g) Demolish or remove material or work no longer required by the Buyer.

If the parties agree on a Variation and the Engineer subsequently elects not to proceed with the Variation, the Seller shall be reimbursed for the proven costs incurred.

27.3 No Variation shall invalidate the Contract.

27.4 If so requested in writing by the Engineer, the Seller shall forthwith, and within a reasonable time, advise the Engineer in writing of:

- a) The effect which the Seller anticipates that a proposed variation will have on the

Contract Program or the date for a key event;

- b) The Seller's estimate of the value of any variation to the Contract Price including itemized prices.

- 27.5 If the Seller requests the Engineer to approve a variation for the convenience of the Seller, the Engineer may do so in writing. The Engineer shall not be obliged to approve a variation for the convenience of the Seller. The Engineer's approval may be conditional and may include, without limitation, a condition that the Seller shall not be entitled to an extension of time or extra remuneration in respect of the variation or anything in connection with the variation which would not have arisen had the variation not been approved.
- 27.6 The amount to be added to or deducted from the Contract Price shall, if not the subject of a quotation from the Seller, which has been accepted by the Buyer prior to the Variation having been confirmed, be determined in accordance with the rates specified in the Annex A1 Part 2. Where rates are not contained in the said schedules or are not applicable, then both parties may agree upon the amount based on the reasonable quotation of the Seller and the reasonable opinion of the Engineer.
- 27.7 Due account shall be taken of any partial performance of the Contract which is rendered useless by any such variation.
- 27.8 NOT USED

- 27.9 When confirming in writing any variation, the Engineer shall give the Seller such notice as will enable him to make his arrangements accordingly.
- 27.10 In cases where the Contract Equipment being object of the Variation is already manufactured, or in the course of manufacture, and any work or drawings or patterns made require alteration due to the Variation, the Seller shall be paid the cost of such alterations.
- 27.11 The Engineer may direct that Variations on site under Article 27.2 shall be carried out as day work.
- a) The Seller shall record and submit to the Engineer each day particulars of the resources used by the Seller for the execution of the day work.
 - b) The day work records shall be in a form to the satisfaction of the Engineer and without limitation details of the labor, material, and other things used to carry out the day work and timesheets, receipts and other documents evidencing the cost of the day work.
- 27.12 Any Variation that results in an increase to the Contract Price will be paid for directly by the Buyer in accordance with the payment terms described in Article 6.
- 27.13 If, in the opinion of the Seller, any such Variation is likely to prevent or prejudice him from or in fulfilling any of his obligations under the Contract, he shall notify the Engineer thereof with full supporting details. The

Engineer shall decide forthwith whether or not the variation shall be carried out.

- 27.14 Until such time as the Engineer confirms in writing his instructions to vary the Contract, such instructions shall be deemed not to have been given.

28 MISCELLANEOUS

- 28.1 In the event any provision to the Contract is held to be or becomes invalid, it shall not affect the validity of the remaining provisions of the Contract. In such cases the Parties shall seek effective solutions as closely as possible approximating the invalid provision(s) in economic effect.

- 28.2 The Parties have agreed that the scope of supply and deliveries as well as the warranties/performances guarantees are exclusively determined as set forth in this Contract and its Annexes.

- 28.3 Should there be any conflict between the terms and conditions contained in the sections forming this Contract the order of precedence shall be:

1st Contract with the inclusion of the statements set forth in Annex A 3 Part 5; then,

2nd Annex A 1 Prices; then,

3rd Annex A 2 Contract Schedules; then,

4th Annex A 3 Additional Contract Conditions Parts 1, 2, 3 and 4; then,

5th Annex C Scope of Supply; then,

6th Annex B Technical Specification; then,
7th Annex E Stainless Steel Products
Specification; then,
8th Annex J Technical Documentation
Specification; then,
9th Annex D Standard Specifications.
10th Annex A3 Additional Contract
Conditions Part 6; then,

- 28.4 Should any discrepancies be found between the contents of the Annexes and the provisions of the Contract it shall be immediately brought to the attention of the Engineer.
- 28.5 All correspondence, documents and software shall be in the English language if not otherwise stated in this Contract. All markings, signs and labels on operator desks and stations shall be in English language.
- 28.6 Seller warrants and represents that neither Seller nor its Sub-contractors will utilize child, slave, prisoner or any other form of forced or involuntary labor for the performance of the Work. At Buyer's request, Seller shall certify in writing its compliance with this provision.
- 28.7 Seller warrants and represents that neither Seller nor its Sub-contractors are engaged in any transactions with, and/or the provision of resources and support to, individuals and organizations associated with, receiving any type of training for, or engaged in, any act or offence described in Article 2, Sections 1,3,4 and 5 of the International Convention for the Suppression of the Financing of Terrorism,

adopted by the General Assembly of the United Nations in Resolution 54/109 of 9 December 1999.

- 28.8 The Seller represents and warrants that no representative of Buyer has received from or will be offered by the Seller any direct or indirect benefit arising from this Contract or the award thereof.
- 28.9 Seller shall not create or do anything which would result in the creation of any lien, encumbrance, right of retention or any other kind of security with respect to the Contract Equipment or any part thereof. Seller shall obligate the Sub- contractors accordingly.
- 28.10 The Parties declare that this Contract constitutes the whole and complete agreement concerning the deliveries and services described herein and that there no other oral or written provisions dealing with the same matter.

29 EFFECTIVENESS OF THE CONTRACT

- 29.1 The Contract is made in the English Language in two (2) originals, one (1) for each party.
- 29.2 NOT USED
- 29.3 NOT USED
- 29.4 NOT USED
- 29.5 This Contract shall become effective and binding upon the Parties at the date of its signature by both Parties.
- 29.6 The Seller shall commence the Work upon the Effective Date, which date shall be the starting date for the Contract Program.

Signed for and on behalf of:

ThyssenKrupp Stainless LLC
(The BUYER)

by duly authorized persons:

Name: Dr. Michael Rademacher

Position: General Manager

Name: Michael Lutter

Position: General Manager


Signed for and on behalf of:

F.L. Industries Inc.
(The SELLER)

by a duly authorized person:

Name: Jean Ledoux

Position: Chief Executive Officer



* * *



Contract N° 1001

Project New Star

**Annex A3 – Additional Contract Conditions –
Cold Rolling Mill 54-1**

Part 2 Subcontractors List

[REDACTED TEXT]

**2.2 Buyer's Preferred Brands or
Manufacturers**

The preferred and authorized brands or manufacturers by the Buyer of materials, parts, components, items and/or devices to be used for the Contract Equipment are shown below.

In the case a brand or manufacturer of a materials, part, component, items and/or device included in this list is in conflict with the Seller's Subcontractors list shown in point 2.1 above, then the brand or manufacturer shown in this list shall prevail. If for technical, quality or availability reasons the Seller cannot use a brand or manufacturer included in this list, then the Seller shall request the written authorization of the Buyer to modify or change such brand or manufacturer.

The following brands and manufacturers are mandatory and only these shall be selected by the Seller for the supply of the related Equipment Units.

Equipment Unit(s)	Brand or Manufactures
Stainless steel and nickel alloyed materials; and components manufactured or fabricated with these.	ThyssenKrupp Stainless AG subsidiaries or related companies (if at reasonable market prices).
Electrical equipment and systems for medium and low voltage distribution.	ABB, Aeva, General Electric, Siemens, Cuttler-Hammer, Square D and Rockwell
Electrical equipment and systems for automation & control.	ABB, Converteam, Rockwell or Siemens
Steering units and systems	EMG
IT hardware (PC's, monitors, ink-jet/laser printers and similar)	Dell, Hewlett Packard or IBM
Fire detection and extinguishing equipment, components and devices.	U.S.A. regulations compliant and UL® listed.
Hydraulic power units, pumps, motors, valves, control blocks, accumulators and related electronics	Rexroth, Vickers, Parker or other known U.S.A. manufacturers with existing service network.
Oils and lubricants	Exxon Mobil, Shell, Chevron, BP, Sunoco, Texaco or other U.S.A. producer.
High pressure hydraulic servo-valves	Moog
Hoist and jib cranes	Yale, P&H, Coffing Hoists or other known U.S.A. manufacturers with existing service network.
Bearings and cam rolls	SKF, FAG, Timken, NTN, INA, Koyo, Rexnord, NSK, KRW, Dodge and McGill
Pyrometers	Brands with existing service network in the USA.
Heavy duty label printers	Datamax (mod. W6308), Zebra (Z6MPlus)
Strapping machines	Signode or other known U.S.A. manufacturers with existing service network.
AC induction motors for standard applications	Siemens, US Motors, Baldor, Reliance, WEG and ABB
CCTV components and systems	Known U.S.A. manufacturers with existing service network.
Intercommunication system	Known U.S.A. manufacturers with existing service network.
HMI software	Wonderware, WinCC, RS View and proprietary software of the system vendor.
Process data acquisition software (PDA)	IBA

* * *

IN THE CIRCUIT COURT OF
MOBILE COUNTY, ALABAMA

OUTOKUMPU STAINLESS)	
USA, LLC, <i>et al.</i> ,)	
Plaintiffs)	
)	
v.)	
CONVERTEAM SAS, a foreign)	CASE NO. 02-CV-
corporation now known as GE)	2016-901202
ENERGY POWER)	
CONVERSION FRANCE SAS,)	
CORP.,)	
Defendant.)	

**DEFENDANT GE ENERGY POWER
CONVERSION FRANCE SAS, CORP.'S
ANSWER TO PLAINTIFFS' COMPLAINT**

Defendant Converteam SAS, a foreign corporation now known as GE Energy Power Conversion France SAS, Corp. (“GE Energy”), answers and responds to the Complaint as follows:

PRELIMINARY STATEMENT

This action returns to this Court following a lengthy procedural battle in federal court regarding GE Energy’s ability to compel to arbitration plaintiffs’ claims and the federal court’s jurisdiction over this action — and that battle is not yet resolved. On February 7, 2019, GE Energy filed a petition for writ of *certiorari* in the Supreme Court of the United States seeking review of the Eleventh Circuit’s decision denying GE Energy’s motion to compel arbitration,

and on May 17, 2019, GE Energy filed a Notice of Appeal in the United States Court of Appeals for the Eleventh Circuit, seeking review of the district court's order remanding this case to state court. Those proceedings remain pending. By filing this Answer, GE Energy does not waive and expressly reserves and preserves all rights, defenses, and arguments set forth in its petition and appeal papers, including those addressing federal jurisdiction and GE Energy's right to compel arbitration.

ANSWER TO PLAINTIFFS' ALLEGATIONS

GE Energy admits that it is a French corporation and was registered to do business in Alabama at certain times.

GE Energy admits that on or about November 25, 2007, Plaintiff Outokumpu Stainless USA, LLC ("OTK"), then known as ThyssenKrupp Stainless USA, LLC, entered into three contracts with F.L. Industries Inc. ("FLI") for the supply of Cold Rolling Mill 54 ("CRM 54"), Cold Rolling Mill 64 ("CRM 64"), and Cold Rolling Mill 74 ("CRM 74") to OTK's stainless steel facility in Calvert, Alabama. GE Energy admits that it designed, engineered, manufactured, and supplied three motors for each CRM.

GE Energy admits that in or around June 2014, OTK reported to GE Energy that the entry motor in CRM 54 had failed. GE Energy admits that it subsequently inspected and repaired the motors.

Except as expressly admitted herein, GE Energy denies the material allegations of the Complaint and demands strict proof thereof. Without limitation, GE Energy denies that it was negligent, that it breached

any warranties, and that it caused any damage to Plaintiffs.

AFFIRMATIVE DEFENSES

Without assuming any burden of proof it would not otherwise bear, GE Energy asserts the following affirmative defenses.

1. The Complaint fails to state a claim against GE Energy upon which relief may be granted.
2. Plaintiffs' claims are subject to binding arbitration.
3. Jurisdiction is proper in federal court.
4. Some or all of the plaintiffs lack standing or capacity to assert the claims alleged in the Complaint.
5. Plaintiffs' alleged injuries and damages were caused, in whole or in part, by the actions or omissions of others for whose conduct GE Energy is not responsible.
6. Plaintiffs have failed to join necessary or indispensable parties.
7. Plaintiffs' claims against GE Energy are barred, in whole or in part, by the applicable statute(s) of limitations.
8. Plaintiffs' claims are barred, in whole or in part, due to waiver, laches, lack of standing, contributory negligence, assumption of the risk, accord and satisfaction, ratification or estoppel.
9. Plaintiffs' claims are barred, in whole or in part, by the economic loss doctrine.
10. Plaintiffs' claims are barred, in whole or in part, by the voluntary payment doctrine.

11. GE Energy reserves the right to assert the defense of spoliation of evidence, if appropriate.

12. GE Energy asserts the defense of intervening or superseding causation.

13. Plaintiffs may be guilty of abuse or misuse of the products allegedly involved in this action and said abuse or misuse may have proximately caused or contributed to plaintiffs' alleged injuries and damages.

14. GE pleads as a set-off any monies received from other sources, including but not limited to any insurance proceeds.

15. If it is established that GE Energy is in any manner legally responsible for any of the damages claimed by plaintiffs, such damages were proximately contributed to and caused by other persons or entities not yet parties to this action, and, therefore, GE Energy is entitled to equitable and applied indemnity/contribution from each such person and entity in an amount in direct proportion to the culpable conduct of the other persons or entities.

16. Plaintiffs' recovery is barred, in whole or in part, to the extent plaintiffs failed to mitigate their alleged injuries or damages.

17. Plaintiffs' claims are barred, in whole or in part, because the design, manufacture, inspection, packaging, or labeling of GE Energy's products are, and have always been, consistent with the generally recognized technological, scientific, and industrial state-of-the-art.

18. GE Energy pleads all defenses under the Uniform Commercial Code now existing or which may arise in the future.

19. Plaintiffs' claims or damages are barred or limited by the provisions of the applicable contracts, agreements, or warranties.

20. Plaintiffs' warranty claims are barred due to a lack of privity between plaintiffs and GE Energy.

21. GE Energy never created an implied warranty in favor of plaintiffs.

22. The products allegedly at issue were not defective within the meaning of the Alabama Extended Manufacturer's Liability Doctrine because of each of the following:

(a) They had been altered or modified prior to the incident and were not in substantially the same condition at that time as when they left the manufacturer or distributor;

(b) The products were not unreasonably dangerous;

(c) The products were not unreasonably dangerous because they were not more dangerous than the ordinary user would have contemplated;

(d) The manufacture and design of the products was well in keeping with the state-of-the-art at the time of the manufacture of the products; and

(e) The products were not unreasonably dangerous because the benefits of the products outweighed any of the attendant risks.

23. Because of its investigation of the allegations contained in plaintiffs' complaint is not complete at this time, GE Energy hereby gives notice that it may rely upon such other defenses (affirmative or otherwise) as may become available or apparent during the course of discovery and thus reserves the

right to amend its Answer to assert any such defenses. Moreover, GE Energy reserves the right to subsequently amend its Answer in order to clarify, if necessary, the applicability of any defenses or to withdraw certain defenses.

/s/ Sara Anne Ford
One of the Attorneys for
Defendant GE Energy
Power Conversion
France SAS, Corp.

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* * *

IN THE CIRCUIT COURT OF MOBILE COUNTY,
ALABAMA

OUTOKUMPU STAINLESS)
USA, LLC, SOMPO AMERICAN)
INSURANCE COMPANY,)
formerly known as Sompo Japan)
Insurance Company of America,)
as subrogee of Outokumpu)
Stainless USA, LLC, POHJOLA)
INSURANCE LIMITED, as)
subrogee of Outokumpu Oyj and)
Outokumpu Stainless USA, LLC,)
AIG EUROPE SA, formerly)
known as AIG Europe Limited, as)
subrogee of Outokumpu Oyj and)
Outokumpu Stainless USA, LLC,) CASE NO. 02-
TAPIOLA GENERAL MUTUAL) CV-2016-
INSURANCE COMPANY, as) 901202.00
subrogee of Outokumpu Oyj and)
Outokumpu Stainless USA, LLC,)
AXA CORPORATE SOLUTIONS)
ASSURANCE SA UK BRANCH,)
as subrogee of Outokumpu Oyj)
and Outokumpu Stainless USA,)
LLC, HDI GERLING UK)
BRANCH, as subrogee of)
Outokumpu Oyj and Outokumpu)
Stainless USA, LLC, MSI)
CORPORATE CAPITAL LTD as)
sole Corporate Member of)
Syndicate 3210, as subrogee of)
Outokumpu Oyj and Outokumpu)

Stainless USA, LLC, and ROYAL)
 & SUN ALLIANCE PLC, as)
 subrogee of Outokumpu Oyj and)
 Outokumpu Stainless USA, LLC,)
 Plaintiffs)
 v.)
 CONVERTEAM SAS, a foreign)
 corporation now known as GE)
 Energy Power Conversion France)
 SAS, Corp., GE ENERGY)
 POWER CONVERSION USA,)
 INC., and GENERAL ELECTRIC)
 INTERNATIONAL, INC.,)
 Defendants.

AMENDED COMPLAINT

Outokumpu Stainless USA, LLC (“OTK”), Sompo American Insurance Company, formerly known as Sompo Japan Insurance Company of America, as subrogee of Outokumpu Stainless USA, LLC, Pohjola Insurance Limited, as subrogee of Outokumpu Oyj and Outokumpu Stainless USA, LLC, AIG Europe SA, formerly known as AIG Europe Limited, as subrogee of Outokumpu Oyj and Outokumpu Stainless USA, LLC, Tapiola General Mutual Insurance Company, as subrogee of Outokumpu Oyj and Outokumpu Stainless USA, LLC, Axa Corporate Solutions Assurance SA UK Branch, as subrogee of Outokumpu Oyj and Outokumpu Stainless USA, LLC, HDI Gerling UK Branch, as subrogee of Outokumpu Oyj and Outokumpu Stainless USA, LLC, MSI Corporate Capital Ltd as sole Corporate Member of Syndicate

3210, as subrogee of Outokumpu Oyj and Outokumpu Stainless USA, LLC, and Royal & Sun Alliance plc, as subrogee of Outokumpu Oyj and Outokumpu Stainless USA, LLC (all Plaintiffs other than OTK are the “Insurers,” and collectively, OTK and the Insurers are “Plaintiffs”), bring the following Amended Complaint against Defendant Converteam SAS, now known as GE Energy Power Conversion France SAS, Corp., and OTK also includes in this Amended Complaint claims against new Defendants GE Energy Power Conversion USA, Inc. and General Electric International, Inc., stating as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Outokumpu Stainless USA, LLC (“OTK”), is the owner of a stainless steel manufacturing and processing facility located in Calvert, Alabama. OTK has its principal place of business in Calvert, Alabama. The sole member of the OTK LLC is Outokumpu Americas, Inc., a Delaware corporation with its principal place of business in Calvert, Alabama, and Outokumpu Americas, Inc. is part of a group of companies whose ultimate corporate parent is Outokumpu Oyj of Finland. At all times relevant, Outokumpu Oyj had an interest, including an insurable interest, in the motors involved in this matter.

2. Plaintiff Sompo American Insurance Co., formerly known as Sompo Japan Insurance Company of America, (“Sompo”) is the American subsidiary of Sompo Japan Nipponkoa Insurance Inc. having its principal place of business in New York, New York. Sompo insured Outokumpu Americas, Inc. (and any subsidiary) and OTK, including the buildings at the

Calvert, Alabama location, under a commercial property policy.

3. The remaining Plaintiffs, Pohjola Insurance Limited, AIG Europe SA, formerly known as Europe Limited, Tapiola General Mutual Insurance Company, Axa Corporate Solutions Assurance SA UK Branch, HDI Gerling UK Branch, MSI Corporate Capital Ltd as sole Corporate Member of Syndicate 3210, and Royal & Sun Alliance plc, are insurance carriers, under a Master Insurance Policy, which insured Outokumpu Oyj and its subsidiaries, including OTK and the buildings at the Calvert, Alabama location.

4. Convertteam SAS, now known as GE Energy Power Conversion France SAS, Corp., (“Convertteam”) was, at all times relevant, a foreign corporation incorporated under the laws of France and having a registered agent in the State of Alabama.

5. GE Energy Power Conversion USA, Inc. (“GE USA”) was, at all times relevant, a corporation incorporated under the laws of the State of Delaware, reporting its principal place of business as Schenectady, New York, and having a registered agent in the State of Alabama.

6. General Electric International, Inc. (“GE International”) was, at all times relevant, a corporation incorporated under the laws of the State of Delaware, reporting its principal place of business as Schenectady, New York, and having a registered agent in the State of Alabama.

7. Convertteam engineered, designed, manufactured, fabricated, delivered, installed, and commissioned certain motors and equipment as part

of the construction of OTK's Cold Rolling Mills facility in Calvert, Mobile County, Alabama.

8. Following failures of the original Convertteam motors, OTK's parent company Outokumpu Americas, Inc. entered into a Blanket Framework Agreement with GE USA. Pursuant to this Blanket Framework Agreement, OTK placed a purchase order with GE International for the storage of OTK's Convertteam motors and rotors critical to the operation of OTK's Cold Rolling Mills facility in Calvert, Mobile County, Alabama.

9. GE International invoiced OTK for the storage of OTK's Convertteam motors and rotors under the above-referenced purchase order. OTK paid these invoices because the proper storage of its Convertteam motors and rotors was critical to the operation of OTK's Cold Rolling Mills facility in Calvert, Mobile County, Alabama.

10. This Court has subject-matter jurisdiction and personal jurisdiction over Defendants. All Defendants have had substantial, intentional contacts with the State of Alabama, had registered agents in the State of Alabama, and conducted business in the State of Alabama.

11. OTK has approximately 900 employees who reside in the State of Alabama. It manufactures and processes stainless steel in Alabama for delivery nationwide and beyond.

12. Venue is correct and convenient in this jurisdiction, as the motors and equipment were delivered, installed, commissioned, and ultimately failed in the Cold Rolling Mills at OTK's facility in Calvert, Mobile County, Alabama, and the

Converteam motors and rotors stored for OTK were critical to the operation of OTK's Cold Rolling Mills facility in Calvert, Mobile County, Alabama.

BACKGROUND FACTS

13. In 2007, the construction of the stainless steel-making facility and cold rolling works in Calvert, Alabama (the "Project") was announced. Groundbreaking began in November 2007.

14. The Project consisted of, *inter alia*, constructing three Cold Rolling Mills (CRM 54, CRM 64, and CRM 74) at the OTK facility, where cold-rolled flat finished products and stainless steel would be produced.

15. Converteam engineered, designed, manufactured, fabricated, delivered, installed, and commissioned a total of nine motors—each of the three Cold Rolling Mills had three motors: (1) an Entry Motor; (2) a Stand Motor; and (3) an Exit Motor.

16. There was no contractual relationship between OTK and Converteam for the Project. Instead, Converteam registered as a contractor in Alabama and performed work at the OTK facility apparently based on an "Agreement for Consortial Cooperation" that Converteam had entered into with F.L. Industries, Inc. (a Delaware corporation now known Five ST Corp.).

17. Although OTK knew that the Cold Rolling Mills would have Converteam motors, neither F.L. Industries, Inc. nor Converteam provided OTK with a copy of this "Agreement for Consortial Cooperation" until after the original Converteam motors had begun to fail.

18. The motors were an integral part of the construction and operation of the Cold Rolling Mills and were expected to last many years.

19. All motors are marked with the Converteam logo.

The Deficiencies in Converteam's Motors and Equipment

20. On or about June 13, 2014, the Entry Motor in CRM 54 failed catastrophically. At the time of the failure, the Entry Motor had been in operation for less than two years.

21. When CRM 54 catastrophically failed, other equipment and property, such steel coils in process, were also damaged.

22. In July 2014, OTK sent the three motors from CRM 54 to GE International in New Orleans so GE International could inspect and repair the problems in the motors. As a result, OTK was forced to shut down CRM 54 entirely so that the motors could be evaluated and repaired.

23. The problems found in the motors were unknowable and undiscoverable by OTK during construction of the Cold Rolling Mills, prior to the actual failure of the Entry Motor in CRM 54 in June 2014 and the subsequent inspection and disassembly of the motors.

24. In its Answer (Doc. 47) to the original Complaint, Converteam admits that, following the June 2014 failure of the Entry Motor in CRM 54, it "inspected" the motors.

25. On information and belief, GE International charged OTK for the "inspections" that Converteam

refers to in its Answer (Doc. 47) to the original Complaint.

26. On information and belief, OTK paid GE International for the “inspections” that Converteam refers to in its Answer (Doc. 47) to the original Complaint.

27. At the time, OTK was under the impression that it was GE International—and not Converteam—who was performing the “inspections.”

28. In any event, whether through Converteam or through GE International, OTK had borescope inspections performed of the Converteam motors in CRM 64 and CRM 74.

29. Inspections uncovered problems with the Stand and Exit motors on CRM 54 and on the motors on CRM 64 and CRM 74, similar to the problem that caused the catastrophic failure of the CRM 54 Entry Motor in June 2014.

30. Despite temporary repairs performed in September 2014, a Converteam motor on CRM 64 failed on or about February 4, 2015, and a Converteam motor on CRM 74 failed on or about August 25, 2015.

31. Converteam failed to cure the deficiencies, including its negligent engineering, design, manufacture, fabrication, delivering, installation, and commissioning of the motors and equipment, which resulted in millions of dollars’ worth of damages, including damage to CRM 54 following the June 13, 2014 failure; damage to other equipment and property; loss of production; and business interruption losses.

The Insurance Payments

32. At all times relevant, Sompo insured OTK and its Calvert facility under a Commercial Lines Policy No. HPR-99250-XO (“Policy”). This Policy contained a provision permitting Sompo to pursue a subrogation action to recover any amount paid to its insured pursuant to the policy.

33. At all times relevant, the other named insurance carriers insured Outokumpu Oyj and its subsidiaries, including OTK, under a related Master Policy, Policy No. 16-376-879-0 (“Master Policy”). The Master Policy also allowed those carriers to pursue a subrogation action to recover any amount paid to any Outokumpu entity pursuant to the Master Policy.

34. OTK and Outokumpu Oyj made certain claims under the Policy upon Sompo and upon the other insurers under the Master Policy for the losses sustained due to the failure of the motors.

35. Sompo and the other insurers have paid OTK and Outokumpu Oyj over \$45,000,000 under the Policy and Master Policy for the losses claimed following the failure of the Entry Motor in CRM 54.

36. Although partially compensated for its losses through insurance, OTK suffered damages well beyond the amount paid by its insurers. Moreover, OTK was subject to a significant deductible that it is entitled to recover as damages in the present suit. Therefore, both OTK and its insurers are proper parties to this litigation, and each has suffered substantial damages as a result of Convertteam’s actions and inactions.

37. Sompo and the other insurers assert that they are equitably and contractually subrogated to the

rights of OTK and Outokumpu Oyj to the extent of the payments made.

38. All conditions precedent to bringing this action have occurred, have been met, or have been waived.

The Replacement, Repairs, and Storage of the Motors (and Their Rotors)

39. In its Answer (Doc. 47) to the original Complaint, Converteam admits that, following the June 2014 failure of the Entry Motor in CRM 54, it “repaired” the motors.

40. These repairs included recoiling the rotors from the motors.

41. These repairs were performed at GE International’s facility in New Orleans, Louisiana.

42. OTK paid GE International for these repairs.

43. On or about February 6, 2015—approximately eight months after the catastrophic failure of the Entry Motor in CRM 54—Outokumpu Americas, Inc. entered into a “Blanket Framework Agreement for Services” with GE USA.

44. On or about May 18, 2015, in accordance with this Blanket Framework Agreement, OTK ordered from GE USA the following items: (1) a new motor for CRM 54; (2) a new motor that could be used on either CRM 64 or CRM 74; (3) three new rotors for CRM 54; (4) three new rotors for CRM 64; and (5) three new rotors for CRM 74.

45. OTK paid GE USA millions of dollars for the new motors and rotors.

46. OTK also paid GE USA to switch out the rotors in all nine Converteam motors at OTK’s Cold Rolling Mills facility in Calvert, Alabama.

47. One of the purposes of ordering new motors and rotors was to ensure that OTK would never experience a shut-down like that caused by the June 2014 catastrophic failure of the Entry Motor in CRM 54.

48. Since motors and their rotors are expected to operate for many years, most operators of Cold Rolling Mills would not keep spare motors and rotors on hand.

49. However, because of the losses it suffered following the June 2014 catastrophic failure of the Entry Motor in CRM 54 and the subsequent failure of a motor in CRM 64, OTK decided that it could not afford to risk another failure and decided to keep spares on hand.

50. While OTK was waiting for delivery of the new motors and rotors from GE USA, OTK also experienced the failure of an original Converteam motors in CRM 74 on or about August 25, 2015—and this was despite the repairs that Converteam and/or GE Energy had already performed.

51. GE USA promulgated “Manufacturer Recommendations—Long Term Storage” for its motors and rotors, and GE USA and/or GE International provided OTK with a copy of these recommendations.

52. Therefore, once the new motors and rotors arrived, OTK decided that it was imperative to keep its repaired original Converteam motors and rotors as spares and to store them in accordance with GE USA’s “Manufacturer Recommendations—Long Term Storage.”

53. To this end, OTK, on or about November 19, 2015, issued a purchase order to GE International for the storage of two of OTK’s Converteam motors and nine of OTK’s Converteam rotors.

54. In accordance with the purchase order, GE USA, GE International, and/or Converteam stored OTK's two Converteam motors and its nine Converteam rotors at GE International's facility in New Orleans. OTK's Converteam rotors so stored had all been repaired (recoiled) by GE International.

55. Converteam engineered, designed, manufactured, fabricated, and delivered the storage crates in which the rotors would be stored.

56. GE International invoiced OTK \$2,500 for each month it stored OTK's Converteam motors and rotors in New Orleans and also invoiced OTK the amount of \$2,023 for the periodic mobilization of the Converteam motors.

57. The months covered by GE International's invoices varied at first, but starting in or about September 2017, GE International began sending OTK its invoices on a quarterly basis.

58. This meant that, based on the monthly storage fee of \$2,500, OTK was paying GE International \$7,500 every quarter for storage of OTK's original Converteam motors and rotors.

59. Beginning in or about September 2018, ABB, Inc., rather than GE International, began sending OTK the quarterly invoices for \$7,500 covering storage of OTK's Converteam motors and rotors.

60. ABB, Inc. invoiced OTK for \$7,500 on a quarterly basis between September 2018 and May 2019, and OTK paid all of ABB, Inc.'s invoices, just as it had paid all of GE International's invoices.

61. However, neither Outokumpu Americas, Inc. nor OTK ever received notice from GE USA, GE

International, or Converteam that they were assigning performance of OTK's purchase order for the storage of the Converteam motors and rotors to ABB, Inc. or to any other entity.

62. Under the February 6, 2015 "Blanket Framework Agreement for Services," GE USA, GE International, and/or Converteam could not assign performance of OTK's purchase order for the storage of its Converteam motors and rotors to another entity without the written consent of OTK or Outokumpu Americas, Inc.

63. Neither Outokumpu Americas, Inc. nor OTK ever consented of the assignment of the purchase order for the storage of its Converteam motors and rotors, because nobody ever requested such consent from Outokumpu Americas, Inc. or from OTK.

The Damage to the Motors and Rotors in Storage

64. On March 18, 2019, counsel for Converteam notified OTK's counsel as follows:

- a. The GE International facility in New Orleans "now belongs to ABB, Inc.;"
- b. ABB, Inc. has advised Converteam that "it is closing the [New Orleans] facility in early July 2019"; and
- c. If OTK did not arrange to move the motors and rotors from the New Orleans facility to another location, Converteam "expect[s] that ABB will scrap them."

65. On or about March 28, 2019, an OTK employee visited the New Orleans facility.

66. During his March 2019 visit, the OTK employee found OTK's nine Converteam rotors sitting outside.

67. The storage of the Converteam rotors outside was contrary to GE USA's "Manufacturer Recommendations—Long Term Storage."

68. In fact, OTK's employee observed standing water inside the Converteam storage crates in which some of OTK's Converteam rotors were being kept outside.

69. OTK's employee asked employees at the New Orleans facility how long OTK's Converteam rotors had been stored outside; he was told that the rotors had been outside since October or November 2018.

70. During his March 2019 visit, the OTK employee found OTK's two Converteam motors sitting inside—not outside like the rotors—but even being inside, the motors were not properly protected from dust and moisture.

71. As a result of storage at the New Orleans facility in a manner contrary to GE USA's "Manufacturer Recommendations—Long Term Storage," OTK's Converteam motors and rotors have all suffered damage.

72. ABB, Inc. was identified both in Converteam's counsel's March 18, 2019 letter and the invoices OTK had been receiving since September 2018. On or about May 22, 2019, OTK learned for the first time that the New Orleans facility may have been operated not by ABB, Inc., but by another entity, called Industrial Connections & Solutions, LLC.

73. Neither GE USA, GE International, Converteam, or ABB, Inc. ever notified OTK that they

were transferring custody of the OTK's Converteam motors and rotors to Industrial Connections & Solutions, LLC.

COUNT I: NEGLIGENCE
(ALL PLAINTIFFS AGAINST CONVERTEAM)

74. Plaintiffs adopt and incorporate the allegations stated in Paragraphs 1–38 as if fully set forth in this paragraph.

75. In this commercial construction project, Converteam owed OTK a duty of care to properly supply, construct, and commission the Cold Rolling Mills with motors that would properly operate. In particular:

- a. the engineering, design, manufacture, fabrication, delivering, installation, and commissioning of the motors and equipment by Converteam for the construction project was intended to affect OTK, the owner and user of the Cold Rolling Mills;
- b. harm to OTK by the failure of the motors in the Cold Rolling Mills was foreseeable to Converteam;
- c. damage or injury to OTK was fairly certain, if the motors in the Cold Rolling Mills failed;
- d. the damage or injury to OTK was closely connected to Converteam's negligent conduct;
- e. moral blame attaches to Converteam for its negligent conduct causing the motors to fail; and
- f. Converteam should be held liable for its negligent conduct to fulfill a policy of preventing future harm to OTK and others using Converteam motors.

76. OTK relied on Converteam to engineer, design, manufacture, fabricate, deliver, install, and commission the motors correctly so they, and the Cold Rolling Mills, would operate properly.

77. Converteam breached its duty to care owed to OTK by negligently engineering, designing, manufacturing, fabricating, delivering, installing, and commissioning the motors and equipment for the construction of the Cold Rolling Mills, knowing that OTK was relying on Converteam's proper performance to assure the proper construction and operation of the Cold Rolling Mills.

78. Converteam's breach of its duty of care owed to OTK proximately caused:

- a. the catastrophic failure of the Entry Motor in CRM 54;
- b. problems in the Stand and Exit Motors in CRM 54;
- c. problems in the motors in CRM 64 and CRM 74;
- d. the shut-down of the Cold Rolling Mills; and
- e. Plaintiffs to suffer substantial damages, including the cost to inspect and repair the damaged motors and equipment; the cost to inspect and fix the problems in the motors that had not yet failed so they would function as intended; loss of production; interruption of business; and associated losses.

79. In addition, the failure of Converteam's motor in CRM 54 caused damage to other property, including steel coils in process in CRM 54 at the time of the failure of the Entry Motor.

80. Sompo and the other insurers have paid OTK and Outokumpu Oyj over \$45,000,000 under the Policy and Master Policy for the losses claimed caused by the failure of the Entry Motor in CRM 54.

81. Sompo and the other insurers assert that they are equitably and contractually subrogated to the rights of OTK and Outokumpu Oyj to the extent of the insurance payments made.

WHEREFORE, Plaintiffs seek all recoverable damages, court costs, fees, and interest arising from Converteam's negligence, which exceed the minimal jurisdictional limits of this Court.

**COUNT II: PRODUCTS LIABILITY/BREACH
OF ALABAMA EXTENDED MANUFACTURER'S
LIABILITY DOCTRINE (ALTERNATIVE)
(ALL PLAINTIFFS AGAINST CONVERTEAM)**

82. Plaintiffs adopt and incorporate the allegations stated in Paragraphs 1–38 as if fully set forth in this paragraph.

83. In the alternative to Count I, at all times relevant, Defendant Converteam was engaged in the business of engineering, designing, manufacturing, fabricating, delivering, installing, and commissioning the motors and equipment that failed.

84. At the time of the failure, the motors and equipment were in substantially the same condition as when engineered, designed, manufactured, fabricated, delivered, installed, and commissioned by Converteam.

85. The motors and equipment were being used in a manner that was reasonable and foreseeable.

86. The motors and equipment were unreasonably dangerous at the time they were placed into the stream of commerce by Convertteam because they posed a risk of a catastrophic failure which could result in injury and damage.

87. Convertteam had actual or constructive knowledge of the risk and danger of failure but, nonetheless, caused or allowed the motors and equipment to be placed into the stream of commerce in an unreasonably dangerous condition.

88. The unreasonably dangerous condition of the motors and equipment were the proximate cause of the failure that resulted in damage to the motors and other property, including the Cold Rolling Mills and equipment and the steel coils in process.

89. Sompo and the other insurers have paid OTK and Outokumpu Oyj millions of dollars under the Policies for the losses claimed following the failure of the Entry Motor in CRM 54 and failures and problems in the Stand and Exit Motors in CRM 54 and failures and problems with the motors in CRM 64 and CRM 74 at OTK's Calvert facility.

90. Sompo and the other insurers assert that they are equitably and contractually subrogated to the rights of OTK and Outokumpu Oyj to the extent of the insurance payments made.

WHEREFORE, Plaintiffs seek all recoverable damages, court costs, fees, and interest in excess of the minimal jurisdictional limits of this Court for Convertteam's actions.

**COUNT III: BREACH OF STORAGE
CONTRACT**

**(OTK AGAINST CONVERTEAM, GE USA, AND
GE INTERNATIONAL)**

91. OTK adopts and incorporate the allegations stated in Paragraphs 1–73 as if fully set forth in this paragraph.

92. GE USA and GE International contracted with OTK to repair and store OTK’s original Converteam motors and rotors.

93. In Answer (Doc. 47) to the original Complaint, Converteam admits that it, too, “repaired” the motors at the OTK facility following the failure of the original Converteam Entry Motor in CRM 54. As such, Converteam apparently considers itself bound by contracts that GE USA and GE International entered into with OTK on or after June 14, 2014.

94. OTK has fully performed its contractual obligations by paying GE International for repairs and paying an additional \$2,500 in monthly storage costs.

95. GE USA, GE International, and Converteam breached their contractual obligations to OTK by not obtaining OTK’s permission before placing OTK’s original Converteam motors and rotors in the custody of ABB, Inc. and/or Industrial Connections & Solutions, LLC, by allowing OTK’s Converteam rotors to be stored outside, and by not properly protecting OTK Converteam’s motors from dust and moisture.

96. OTK’s Converteam motors and rotors have suffered damage as a result of these breaches of the storage contract, and OTK has had to incur the cost of repairing the damaged motors and rotors.

97. OTK’s operation of its Cold Rolling Mills has faced additional uncertainty following discovery that

its Converteam motors and rotors had not been stored in a manner necessary for OTK to have working spares on hand in the event that one or more of the GE USA replacement motors or rotors were to fail like the original Converteam motors had failed.

WHEREFORE, OTK seeks all recoverable damages, court costs, fees, and interest in excess of the minimal jurisdictional limits of this Court for Defendants' actions.

**COUNT IV: NEGLIGENCE/NEGLIGENT
ENTRUSTMENT (ALTERNATIVE) (OTK
AGAINST ALL DEFENDANTS)**

98. OTK adopts and incorporates the allegations stated in Paragraphs 1–73 as if fully set forth in this paragraph.

99. GE USA, GE International, and/or Converteam took custody of OTK's Converteam motors and rotors at GE International's New Orleans facility.

100. In fact, Converteam engineered, designed, manufactured, fabricated, and delivered the storage crates in which the rotors would be stored.

101. In the alternative to Count III, in taking custody of OTK's original Converteam motors and rotors, GE USA, GE International, and/or Converteam had a duty to store the motors and rotors in way that would not cause damage to motors and rotors.

102. GE USA, GE International, and/or Converteam breached this duty by allowing all nine of OTK's Converteam rotors to be placed outside and exposed to the elements.

103. GE USA, GE International, and/or Converteam also breached this duty by not properly

protecting OTK's Convertteam motors, stored inside, from dust and moisture.

104. On information and belief, GE USA, GE International, and/or Convertteam were aware of GE USA's "Manufacturer Recommendations—Long Term Storage."

105. It is contrary to GE USA's "Manufacturer Recommendations—Long Term Storage" to store rotors outside for an extended period of time and to allow the Convertteam storage crates in which OTK's Convertteam rotors are stored to become filled with standing water.

106. It is likewise contrary to GE USA's "Manufacturer Recommendations—Long Term Storage" to not protect OTK's Convertteam motors from dust and moisture.

107. Without notice to OTK or Outokumpu Americas, Inc., GE USA, GE International, and/or Convertteam entrusted custody of OTK's original Convertteam motors and rotor to ABB, Inc. and/or Industrial Connections & Solutions, LLC.

108. On information and belief, and as evidenced by the fact that the rotors were placed outside and the Convertteam storage crates were allowed to fill with standing water, GE USA, GE International, and/or Convertteam did not inform ABB, Inc. and/or Industrial Connections & Solutions, LLC of GE USA's "Manufacturer Recommendations—Long Term Storage."

109. By entrusting OTK's original Convertteam motors and rotors rotor to ABB, Inc. and/or Industrial Connections & Solutions, LLC without informing ABB, Inc. and/or Industrial Connections & Solutions,

LLC of GE USA's "Manufacturer Recommendations—Long Term Storage," GE USA, GE International, and/or Converteam breached their duties to OTK and negligently entrusted ABB, Inc. and/or Industrial Connections & Solutions, LLC with custody of OTK's original Converteam motors and rotors.

110. As evidenced by the fact that the rotors were left outside and the Converteam storage crates were allowed to fill with standing water, ABB, Inc. and/or Industrial Connections & Solutions, LLC did not know how to store OTK's original Converteam motors and rotors and had no business charging OTK \$7,500 each quarter for storage costs.

111. GE USA, GE International, and/or Converteam would have known that ABB, Inc. and/or Industrial Connections & Solutions, LLC did not know how to store OTK's original Converteam motors and rotors based on a simple visit to the New Orleans facility.

112. OTK's Converteam motors and rotors have suffered damage as a result, and OTK has had to incur the cost of repairing the damaged motors and rotors.

113. OTK's operation of its Cold Rolling Mills has faced additional uncertainty following discovery that its Converteam motors and rotors had not been stored in a manner necessary for OTK to have working spares on hand in the event that one of more of the GE USA replacement motors or rotors were to fail like the original Converteam motors had failed.

WHEREFORE, OTK seeks all recoverable damages, court costs, fees, and interest in excess of the minimal jurisdictional limits of this Court for Defendants' actions.

JURY DEMAND

Plaintiffs demand trial by struck jury on all issues so triable.

Respectfully submitted, this 22nd day of August, 2019.

By: /s/ Mark E. Spear _____

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PLAINTIFF OUTOKUMPU STAINLESS USA, LLC
REQUESTS SERVICE OF THIS AMENDED
COMPLAINT BY CERTIFIED MAIL ON THE
FOLLOWING NEWLY-NAMED DEFENDANTS:

GE Energy Power Conversion USA, Inc.
c/o Its Registered Agent
CT Corporation System
2 North Jackson St., Suite 605
Montgomery, AL 36104

General Electric International, Inc.
c/or Its Registered Agent
The Corporation Company
2000 Interstate Park Dr.
Montgomery, AL 36109

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