

1. **RENTAL:** Unless otherwise provided herein, rental shall be payable monthly as of the end of each month during the term of this Rental Agreement for use of the leased equipment during that month. Rental shall be due within thirty (30) days after receipt of Lessor's invoice therefor. No rental or other charges shall accrue in respect of any leased equipment (a) during any period while the same is mechanically inoperable or impaired for any reason not caused by the fault or neglect of Lessee, (b) during any period while Lessee is enjoined from the operation or use of the same, or (c) after the expiration or earlier termination of this Rental Agreement or of the rental term of any unit of leased equipment.

2. **WARRANTIES:** Lessor represents and warrants that (a) Lessor has full power and authority to use, deal with and lease each unit of leased equipment in accordance with this Rental Agreement, (b) all leased equipment in the form, state and condition delivered to Lessee shall be in good, safe and serviceable operating condition, fit for the uses intended and in compliance with all applicable federal, state and local laws, ordinances and regulations, and (c) the rental rates and any other charges specified herein do not exceed the standard rates paid for similar items of equipment in the location where the leased equipment is to be used.

3. **MAINTENANCE, REPAIR AND REPLACEMENT:** Unless otherwise provided herein, Lessee shall be responsible for normal, routine maintenance of the leased equipment while in its possession. Unless otherwise provided herein, Lessor shall be responsible for major maintenance and for the repair and/or replacement of leased equipment except to the extent that the repair or replacement of any unit of leased equipment is occasioned by the fault or neglect of Lessee.

4. **DELIVERY:** Lessor shall deliver the leased equipment to Lessee at Lessee's intended place of use.

5. **INSPECTION:** Lessor may inspect the leased equipment at any time during Lessee's regular business hours upon reasonable prior notice to Lessee.

6. **RETURN:** Upon the expiration or earlier termination of this Rental Agreement or of the rental term of any unit of leased equipment, Lessor shall remove the leased equipment from Lessee's place of use. All such leased equipment shall be returned to Lessor in the form, state and condition received by Lessee, less normal wear and tear.

7. **INSURANCE:** If Lessor is required to maintain any of the leased equipment on Lessee's premises, the following provisions shall apply:

A. Lessor shall, at its expense, procure and maintain the following insurance:

(a) **WORKER'S COMPENSATION INSURANCE** in the amount required by all applicable laws, including, without limitation, the Longshore and Harbor Workers' Compensation Act and any other federal compensation act or maritime act, and **EMPLOYER'S LIABILITY INSURANCE** to a limit of not less than \$1,000,000. Lessor before commencing the work shall be qualified under the workers' compensation laws of the state or states in which the work or any portion of the work is to be performed and shall at all times comply with the provisions of said laws. All subcontractors of Lessor shall be required by Lessor to maintain the above described insurance coverages and to comply with qualification requirements of all applicable workers' compensation laws; Lessor shall do so on behalf of its subcontractors if its subcontractors fail to maintain said insurance or to comply with said qualification requirements.

(b) **COMPREHENSIVE GENERAL LIABILITY INSURANCE**, including, without limitation, automobile liability covering Lessor and its employees for all of Lessor's operations hereunder, including, without limitation, the operations of all subcontractors, the operation of vehicles and equipment by Lessor or any and all subcontractors and liability assumed under the "indemnity" provision of this Contract, with limits of not less than \$1,000,000 as a combined single limit for injury to, or death of, any person or persons and for property damage, including consequential loss, arising out of any single occurrence.

B. Prior to commencement of the work, Lessor shall provide Lessee with certificates of insurance which demonstrate compliance with the terms of this Article 7. The Comprehensive General Liability Policy (a) shall name Kaiser Aluminum as an additional insured, (b) shall provide that other insurance which Lessee may have to insure loss shall be in excess of and not contribute to a loss to which the insurance provided herein by Lessor is applicable, and (c) shall provide that the insurer waives any right to subrogation which might arise by reason of any payment under the policies against Kaiser Aluminum, its subsidiaries, its affiliated companies and the agents and employees of any of the foregoing.

C. Insurance deductibles, if any, shall not exceed \$10,000 per occurrence, and shall be absorbed entirely by Lessor with no contribution by Lessee. In the event of a reduction or exhaustion of any aggregate limit, Lessor shall secure additional insurance or shall have excess insurance available so as to comply at all times with the above requirements as to limits.

8. **INDEMNITY:**

A. Lessor shall indemnify, save harmless and defend Lessee, its subsidiaries, its affiliated companies and the directors, officers, employees, agents and representatives of any of the foregoing from and against any and all suits, actions, legal proceedings, claims, demands, damages,

costs and expenses of whatsoever kind or character, including, without limitation, attorney's fees and expenses, arising out of or by reason of any liability or obligation in any manner caused or occasioned by or claimed to be caused or occasioned by, any act, omission, fault or negligence of Lessor or anyone acting on its behalf, including, without limitation, the directors, officers, employees, agents and representatives of any of the foregoing, in connection with or incident to this Rental Agreement or with respect to the equipment leased hereunder except where caused by the concurrent negligence of Lessee, its directors, officers, employees, agents and representatives (other than Lessor or anyone acting on its behalf), in which event Lessor's liability for the payment of damages, costs and expenses hereunder shall be reduced in proportion to the negligence of Lessee, its directors, officers, employees, agents and representatives (other than Lessor or anyone acting on its behalf) on the basis of comparative negligence or fault.

B. Without limiting the foregoing, Lessor shall indemnify, save harmless and defend Lessee, its subsidiaries, its affiliated companies and the directors, officers, employees, agents and representatives of any of the foregoing from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs and expenses of whatsoever kind or character, including, without limitation, attorneys' fees and expenses, arising out of or by reason of any injuries (including death) or damage to any person or entity employed by or acting on Lessor's behalf in connection with or incident to this Rental Agreement or with respect to the equipment leased hereunder except where caused by the concurrent negligence of Lessee, its directors, officers, employees, agents and representatives (other than Lessor or anyone acting on its behalf), in which event Lessor's liability for the payment of damages, costs and expenses hereunder shall be reduced in proportion to the negligence of Lessee, its directors, officers, employees, agents and representatives (other than Lessor or anyone acting on its behalf) on the basis of comparative negligence or fault.

C. Lessor's obligations under this Article 8 shall continue without limitation as to time, notwithstanding the extinguishment of other rights and duties under this Rental Agreement by completion, Rental Agreement termination or cancellation or any other manner.

9. PATENTS, TRADE SECRETS, COPYRIGHTS AND TRADEMARKS: Lessor shall indemnify, defend and hold Lessee (including its successors in interest) harmless from and against any action against Lessee based on a claim that the manufacture, sale, rental or use of any of the equipment covered by this Rental Agreement constitutes infringement of any U.S. Patent, now or hereafter issued, or violates any other proprietary interest including, without limitation, copyrights, trademarks and trade secrets if Lessor is notified promptly in writing and is given authority and assistance, at Lessor's expense, for the defense of the action. In the event Lessee is enjoined from the operation or use of any of the equipment covered by this Rental Agreement, Lessor shall, at its expense, take all reasonable steps to procure for Lessee the right to operate and use said equipment. If

Lessor cannot so procure the right within a reasonable time, Lessor shall then promptly, at its expense, (a) modify the equipment so as to avoid infringement or violation of any patent or other proprietary interest, (b) replace the equipment with equipment which does not infringe or violate any patent or other proprietary interest and bear all transportation, removal and redelivery costs, or (c) remove the equipment and refund to Lessee any rental theretofore paid to Lessor for any period during which its operation and/or use was enjoined.

10. TERM:

A. The term of this Rental Agreement and the rental term of any unit of leased equipment shall be as indicated herein. If no term is indicated, the rental basis shall be month to month.

B. Notwithstanding the provisions of Paragraph A of this Article 10, Lessee shall have the right to terminate this Rental Agreement or the rental term of any unit of leased equipment at any time upon not less than seven (7) days' prior written notice to Lessor.

C. Notwithstanding the provisions of Paragraph A of this Article 10, Lessor shall have the right, if rental is on a month-to-month basis, to terminate this Rental Agreement or the rental term of any unit of leased equipment, as the case may be, at any time upon not less than thirty (30) days' prior written notice to Lessee.

11. NOTICES: All notices under this Rental Agreement shall be in writing and may be served by either party on the other by hand, facsimile, telex, telegram, cablegram or regular mail addressed to the respective party at the address indicated in this Rental Agreement. The address of either party may be changed at any time by written notice of such change to the other party. Any such notice shall be effective upon delivery to the intended recipient or seven (7) days after being placed in the ordinary course of the mail, postage paid and properly addressed, whichever occurs first.

12. WAIVER: No waiver of any provision of this Rental Agreement shall constitute a waiver of any other provision of this Rental Agreement or of the same or any other provision in any other instance. No waiver shall be effective except in writing signed by the authorized representatives of the parties hereto.

13. ENTIRE CONTRACT: This Rental Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all negotiations, proposals, agreements and understandings, whether written or oral, with respect thereto. No amendment, variance or change in the provisions of this Rental Agreement shall be effective except in writing signed by the authorized representatives of the parties hereto.

14. APPLICABLE LAW AND VENUE: This Rental Agreement shall be governed by and construed in accordance with the laws of the State where the Lessee's facility leasing the equipment is located without reference to

principles regarding conflicts of laws. Any action brought in connection with this Purchase Order shall be brought in the state courts located in or federal courts with venue that includes the county where Owner's facility leasing the equipment is located, unless the parties shall mutually agree otherwise, and the parties hereto hereby irrevocably consent to the jurisdiction of such courts.