TF-285

PLAINTIFF'S EXHIBIT

HW-559

# DISTRIBUTION AGREEMENT

Dated as of July 17, 1992

between

DRESSER INDUSTRIES, INC.

AND

INDRESCO Inc. ("Indresco")

EXHIBIT

HW 5002

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# DISTRIBUTION AGREEMENT

DISTRIBUTION AGREEMENT, dated as of July 17, 1992, by and between Dresser Industries, Inc., a Delaware corporation ("Dresser"), and INDRESCO Inc., a Delaware corporation and a wholly owned subsidiary of Dresser ("Indresco ").

WHEREAS, Dresser has, among other endeavors, been engaged in research, engineering and production of products through its (i) Harbison-Walker Refractories Division, (ii) Industrial Tool Division, (iii) Marion Division, (iv) Jeffrey Division including the BJD operations in the United Kingdom, the Jeffrey Brazil operations, and the Mogi Brazil facility (v) the operations of Standard Compressors Europe, (vi) the 50% interest in Komdresco, a South African partnership engaged in the production and sale of construction and mining equipment, and (vii) Indresco's ownership of a 50% partnership interest in Komatsu Dresser Company (collectively, the "Transferred Businesses"), which Transferred Businesses are principally outside the scope of its core energy businesses;

WHEREAS, the Board of Directors of Dresser has determined that the interests of Dresser, Indresco and Dresser's shareholders would be best served by owning two separate businesses, one consisting of the Transferred Businesses and the other consisting of its core energy businesses;

WHEREAS, Dresser wishes to transfer and assign to Indresco all of the assets and properties of its Transferred Businesses specified in this Agreement in exchange for (i) the assumption by Indresco of the liabilities and obligations relating to the Transferred Businesses specified in this Agreement, including the liabilities and obligations of Dresser under an Outstanding Borrowing (as hereinafter defined) and a Bank Credit Facility (as hereinafter defined), and (ii)) the issuance to Dresser by Indresco of shares of its common stock, par value $.25 per share (the "Indresco Common Stock");

WHEREAS, Indresco is willing to assume such liabilities and obligations and to issue such shares of Indresco Common Stock to Dresser in exchange for such assets and properties;

WHEREAS, Dresser intends to distribute all of the outstanding shares of Indresco Common Stock, on a pro rata basis, to the holders of the common stock of Dresser, par value $.25 per share (the "Dresser Common Stock") (such distribution hereinafter referred to as the "Distribution") on the Distribution Date (as hereinafter defined);

WHEREAS, Dresser and Indresco have determined that it is necessary and desirable to set forth the principal corporate transactions required to effect the Distribution and to set forth other agreements that will govern certain other matters in connection with the Distribution.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and intending to be legally bound hereby, Dresser and Indresco hereby agree as follows:

## ARTICLE I. DEFINITIONS.

Section 1.01 General. As used in this Agreement, capitalized terms defined immediately after their use shall have the respective meanings thereby provided and the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

Action: any action, claim, suit, arbitration, inquiry, proceeding or investigation by or before any court, any governmental or other regulatory or administrative agency or commission or any arbitration tribunal.

Affiliate: with respect to any specified person, a person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified person; provided, however, that Dresser and Indresco shall not be deemed to be Affiliates of each other for purposes of this Agreement.

Agent: Bank of New York, the distribution agent appointed by Dresser to distribute shares of Indresco Common Stock pursuant to the Distribution.

Assumed Liabilities: collectively, all of the Liabilities and other obligations of Dresser listed on Annex I hereto.

Bank Credit Facility: the bank facility providing for a term loan facility being entered into by Indresco in connection with the Distribution with certain banks, all Liabilities and obligations with respect to which are to remain with Indresco.

Bids, Quotations and Proposals: the outstanding bids, quotations or proposals which have been submitted or made by the Transferred Businesses or Dresser on behalf of the Transferred Businesses.

Books and Records: the books and records of Dresser (or true and complete copies thereof), including all computerized books and records owned by Dresser, which relate principally to the Transferred Businesses and are necessary for Indresco to operate the Transferred Businesses, including, without limitation, all such books and records relating to Transferred Employees, the purchase of materials, supplies and services, the manufacture and sale of products by the Transferred Businesses or dealings with customers of the Transferred Businesses and all litigation files relating to any Action being assumed by Indresco as part of the Assumed Liabilities.

Borrowings: all borrowings or Liabilities and obligations for borrowings being transferred or assumed by Indresco from Dresser or entered into by Indresco in connection with the Distribution, including under or pursuant to the Bank Credit Facility.

Code: the Internal Revenue Code of 1986, as amended.

Collective Bargaining Agreement: each collective bargaining agreement, including each collectively bargained pension agreement, supplemental agreement and letter of understanding, in effect covering Employees engaged in the Transferred Businesses.

Committee: the Compensation Committee of the Board of Directors of Dresser.

Conveyancing and Assumption Instruments: collectively, the various agreements, instruments and other documents to be entered into in order to effect the transfer to Indresco of Transferred Assets, and the assumption by Indresco of the Assumed Liabilities in the manner contemplated by this Agreement.

Corporate Services Agreement: the Master Corporate Services and Support Agreement, substantially is the form set forth as Exhibit A hereto, pursuant to which Dresser and Indresco will provide certain corporate services specified therein to each other.

Distribution Date: the date as of which the Distribution shall be effected as determined by the Dresser Board of Directors; provided, however, that with respect to the transfer of the Transferred Assets and the assumption of the Assumed Liabilities the "Distribution Date" shall mean the close of business on July 31, 1992.

Employee: as defined in the Employee Matters Agreement, any person who is a Transferred Employee or for whom there are Transferred J.V. Employment Liabilities.

Employee Matters Agreement: the agreement, substantially in the form of Exhibit B hereto, pursuant to which Dresser and Indresco have provided for certain employee matters.

Environmental Matters Agreement: the agreement, substantially in the form of Exhibit C hereto, pursuant to which Dresser and Indresco have provided for certain environmental matters.

ERISA: the Employee Retirement Income Security Act of 1974, as amended.

Exchange Act: the Securities Exchange Act of 1934, as amended.

Form 10: the registration statement on Form 10 to be filed by Indresco with the SEC to effect the registration of the Indresco Common Stock pursuant to the Exchange Act.

Indemnifiable Losses: any claim by an Indemnitee for indemnification authorized pursuant to Article V hereof, and all losses, liabilities, claims, damages, obligations, payments, costs and expenses (including, without limitation, the costs and expenses of any and all Actions, demands, assessments, judgments, settlements and compromises relating thereto and reasonable attorneys' fees and expenses in connection therewith) suffered by such Indemnitee with respect to such claim.

Indemnifying Party: any party who is required to pay any other person pursuant to Article V hereof.

Indemnitee: any party who is entitled to receive payment from an Indemnifying Party pursuant to Article V hereof.

Indemnity Payment: the amount an Indemnifying party is required to pay an Indemnitee pursuant to Article V hereof.

Information Statement: the information statement to be sent to the holders of Dresser Common Stock in connection with the Distribution.

Insurance Program: collectively, the series of property and casualty policies pursuant to which various insurance carriers provide insurance coverage to Dresser in respect of claims or occurrences relating to, without limitation, property damage, manufacturers output, business interruption, transit, fire, extended coverage, fiduciary, fidelity, environmental impairment, employee crime, general liability, products' liability, automobile liability and employer's liability, except, to the extent provided in Article VIII, the insurance provided by Dresser's 100% owned subsidiary, Property and Casualty Insurance, Ltd.

Intellectual Property Agreement: the agreement, substantially in the form of Exhibit D hereto, pursuant to which Dresser and Indresco are providing for certain matters involving intellectual property.

Liabilities: any and all debts, liabilities and obligations, whether or not accrued, contingent, known or unknown, or reflected on a balance sheet, including, without limitation, those arising under any law, rule, regulation, Action, order or consent decree of any governmental entity or any judgment of any court of any kind or any award of any arbitrator of any kind, and those arising under any contract, commitment or undertaking.

Option: an option to purchase shares of Dresser Common Stock under any of the Stock Option Plans.

Property and Casualty Insurance, Ltd.: the three entities constituting Dresser's consolidated or self-insured retentions are Property and Casualty Insurance Limited (Bermuda), Property and Casualty Insurance, Ltd., U.S., and Dresser Self Insured, with all three said entities being herein collectively called "Property and Casualty Insurance, Ltd."

Record Date: the date determined by the Board of Directors of Dresser as the record date for the Distribution.

Related Agreements: the Corporate Services Agreement, Environmental Matters Agreement, Intellectual Property Agreement, Employee Matters Agreement, and Tax Sharing Agreement.

Retained Liabilities: Collectively, the Liabilities of Dresser Listed on Annex II hereto.

Revolving Loan: the revolving credit facility, if any, which is part of the Bank Credit Facility.

SEC: the Securities and Exchange Commission.

Indresco By-Laws: the By-Laws of Indresco, substantially in the form of Exhibit E hereto.

Indresco Charter: the Restated Certificate of Incorporation of Indresco, substantially in the form of Exhibit F hereto.

Stock Option Plans: the 1982 Dresser Stock Compensation Plan.

Tax Sharing Agreement: the Tax Sharing Agreement, in the form of Exhibit G hereto, pursuant to which Dresser and Indresco have provided for certain tax matters.

Total Stockholder Equity: total assets less total liabilities after giving effect to all deferred credits and Liabilities for federal, state and local taxes.

Transferred Assets: collectively all of the assets and properties of Dresser identified on Annex III hereto.

## ARTICLE II. REORGANIZATION AND RELATED TRANSACTIONS.

Section 2.01 The Reorganization. Subject to the terms and conditions of this Agreement, Dresser and Indresco shall use their respective best efforts to cause, on the Distribution Date, (i) all of Dresser's right, title and interest in and to the Transferred Assets to be conveyed, assigned, transferred and delivered to Indresco, free and clear of all liens or encumbrances in favor of Dresser, and (ii) all of Dresser's duties, obligations and responsibilities under the Assumed Liabilities to be assumed by Indresco (the "Asset and Liability Transfer"). Subject to Section 6.03 hereof, to the extent that any such conveyances, assignments, transfers and deliveries shall not have been so consummated on the Distribution Date, Dresser and Indresco shall coöperate to effect such consummation as promptly thereafter as shall be practicable, it nonetheless being understood and agreed by Dresser and Indresco that neither shall be liable in any manner to any person who is not a party to this Agreement for any failure of any of the transfers contemplated by this Article II to be consummated on or subsequent to the Distribution Date. Whether or not all of the Transferred Assets or the Assumed Liabilities shall have been legally transferred to Indresco as of the Distribution Date, Dresser and Indresco agree that, as of the Distribution Date, Indresco shall have, and shall be deemed to have acquired, complete and sole beneficial ownership over all of the Transferred Assets, together with all of Dresser's rights, powers and privileges incident thereto, and shall be deemed to have assumed in accordance with the terms of this Agreement all of the

Assumed Liabilities and all of Dresser's duties, obligations and responsibilities incident thereto.

Section 2.02 Issuance of Indresco Common Stock in Exchange for Transferred Assets. In consideration for the conveyance, assignment, transfer and delivery of the Transferred Assets being made pursuant to Section 2.01 hereof, Indresco agrees to issue to Dresser on the Distribution Date, for delivery to the Agent, a single stock certificate representing, in the aggregate, one share of Indresco Common Stock for every five shares of Dresser Common Stock outstanding on the Record Date (less the 110 shares of Indresco Common Stock owned prior thereto by Dresser which Dresser will transfer to Indresco simultaneously therewith and rounded up to the nearest whole share).

Section 2.03 Post-Distribution Adjustment.

(a) As promptly as practicable after the Distribution Date, Dresser and Indresco jointly shall prepare a trial closing balance sheet as of the Distribution Date reflecting Indresco's assets and liabilities (the "Trial Balance Sheet"). The Trial Balance Sheet shall give effect to the Asset and Liability Transfer and be prepared on a basis consistent with the accounting principles, methods and practices employed, and utilizing the same assumptions and bases as were utilized, in the preparation and presentation of the Indresco financial statements contained in the Information Statement, except for any changes contemplated by the next sentence hereof. The Trial Balance Sheet shall give effect to the adjustments provided for in Section 6.09 hereof.

(b) Following the preparation and delivery of the Trial Balance Sheet, Dresser and Indresco shall prepare and cause Indresco's independent public accountants, Price Waterhouse & Co. ("P-W"), to review a closing balance sheet reflecting Indresco's assets and liabilities at the Distribution Date and to recommend adjustments felt to be proper. Dresser and INDRESCO shall endeavor to agree as to incorporation or rejection of the recommended adjustments. Failing agreement, the Price Waterhouse recommended adjustments shall be made and the adjusted balance sheet shall constitute the "Closing Balance Sheet".

(c) The Closing Balance Sheet shall be final and binding on Dresser and Indresco and neither Dresser nor Indresco shall have any right to challenge or protest any of the determinations or valuations made therein or with respect to the Closing Balance Sheet.

Section 2.04 Indresco Charter and By-Laws. Prior to the Distribution Date, the charter and by-laws of Indresco shall be amended and restated by the Board of Directors to read as the Indresco Charter and Indresco By-Laws and the Indresco Charter shall be approved by Dresser, as sole stockholder of Indresco, and filed with the Secretary of State of the State of Delaware.

Section 2.05 Dresser Approval. Dresser shall cooperate with Indresco in effecting, and if so requested by Indresco, Dresser shall, as the sole stockholder of Indresco, ratify any actions which are reasonably necessary or desirable to be taken by Indresco to effectuate the transactions contemplated by this Agreement in a manner consistent with the terms of this Agreement, including, without limitation, the following: (i) the election or appointment of directors and officers of Indresco to serve in such capacities following the Distribution Date, and (ii) the preparation and implementation of appropriate plans, agreements and arrangements for Transferred Employees (including, without limitation, plans, agreements or arrangements pursuant to which Indresco Common Stock would be acquired by Transferred Employees).

## ARTICLE III. ASSUMPTION AND RETENTION OF LIABILITIES.

Section 3.01 Assumed Liabilities. Upon the terms and subject to the conditions set forth in this Agreement and in addition to any other Liabilities otherwise expressly assumed by Indresco pursuant to this Agreement, the Related Agreements or any other agreement contemplated by this Agreement, Indresco hereby agrees with Dresser to assume, pay, perform and discharge in due course any and all Assumed Liabilities.

Section 3.02 Retained Liabilities. Upon the terms and subject to the conditions set forth in this Agreement and in addition to any other Liabilities otherwise expressly retained by Dresser pursuant to this Agreement, the Related Agreements or any other agreement contemplated by this Agreement, Dresser hereby agrees with Indresco that Dresser shall pay, perform and discharge in due course any and all Retained Liabilities.

Section 3.03 Construction of Agreements. Notwithstanding any other provisions in this Agreement to the contrary, in the event and to the extent that there shall be a conflict between the provisions of this Agreement (or any Conveyancing and Assumption Instrument or other instrument of assumption) and the provisions of any other agreement entered into by Dresser or Indresco pursuant to this Agreement (including, without limitation, the Related Agreements), the provisions of such other agreement shall control.

ARTICLE IV. THE DISTRIBUTION.

Section 4.01 The Distribution. On or as promptly as practicable following the Distribution Date, Dresser shall deliver to the Agent for the benefit of holders of record of Dresser Common Stock on the Record Date, stock certificates representing, in the aggregate, one share of Indresco Common Stock for every five shares of Dresser Common Stock outstanding on the Record Date, and shall instruct the Agent to distribute as promptly as practicable following the Distribution Date to holders of record of Dresser

Common Stock on the Record Date one share of Indresco Common Stock for every five shares of Dresser Common Stock and cash in lieu of fractional shares of Indresco Common Stock obtained in the manner provided in Section 4.02 hereof. Indresco agrees to provide to the Agent sufficient certificates in such denominations as the Agent may request in order to effect the Distribution. All of the shares of Indresco Common Stock issued in the Distribution shall be fully paid, nonassessable and free of preemptive rights.

Section 4.02 Fractional Shares. No certificate or scrip representing fractional shares of Indresco Common Stock shall be issued as part of the Distribution and in lieu of receiving fractional shares, each holder of Dresser Common Stock who would otherwise be entitled to receive a fractional share of Indresco Common Stock pursuant to the Distribution will receive cash for such fractional share. Dresser and Indresco agree that Dresser shall instruct the Agent to determine the number of whole shares and fractional shares of Indresco Common Stock allocable to each holder of record of Dresser Common Stock as of the Record Date, to aggregate all such fractional shares into whole shares and sell the whole shares obtained thereby in the open market at then prevailing prices on behalf of holders who otherwise would be entitled to receive fractional share interests and to distribute to each such holder such holder's ratable share of the total proceeds of such sale. Dresser shall bear the costs of commissions incurred in connection with such sale.

Section 4.03 Dresser Board Action.

(a) This Agreement, the Related Agreement and any other agreement contemplated hereby and the consummation of each of the transactions provided for herein or therein shall be subject to approval of the Board of Directors of Dresser.

(b) The Board of Directors of Dresser, in its discretion, shall establish the Record Date and the Distribution Date and all appropriate procedures in connection with the Distribution, but in no event shall the Distribution Date occur prior to such time as all of the following have occurred: (i) the Board of Directors of Dresser has formally approved the Distribution, (ii) the Form 10 shall have been declared effective by the SEC and (iii) the Indresco Common Stock shall have been accepted for listing, subject to official notice of issuance, on the New York Stock Exchange.

ARTICLE V. SURVIVAL AND INDEMNIFICATION.

Section 5.01 Survival of Agreements.

(a) Except as otherwise contemplated by this Agreement, all covenants and agreements of the parties contained in this Agreement shall survive the Distribution Date.

(b) Except as specifically provided herein, the provisions of this Article V shall terminate and be of no further force and effect on the tenth (10th) anniversary of the Distribution Date. Such termination shall in no way limit the obligations of Indresco with respect to the Assumed Liabilities or the obligations of Dresser with respect to the Retained Liabilities and related indemnification rights under this Agreement, which shall survive indefinitely.

(c) The obligations under this Article V of Indresco and Dresser shall survive the sale or other transfer by either of them of any assets or businesses or the assignment by either of them of any Liabilities. To the extent that Dresser assigns any of its Retained Liabilities (except for such amounts of Retained Liabilities which are not material individually or in the aggregate), Dresser shall cause such transferee of such Retained liabilities to assume specifically its obligations with respect thereto under this Agreement and to fulfill its obligations related to such Retained Liabilities. To the extent Indresco transfers to another party other than a subsidiary of Indresco any of the Assumed Liabilities (except for such amounts of Assumed Liabilities which are not material individually or in the aggregate), Indresco will cause the transferee of such Assumed Liabilities to assume specifically its obligations with respect thereto under this Agreement and will cause such transferee to fulfill its obligations related to such Assumed Liabilities. In the event the transferee of the Retained Liabilities or Assumed Liabilities does not fulfill its obligations with respect thereto, Dresser and Indresco, respectively, shall fulfill their obligations with respect thereto.

Section 5.02 Indemnification.

(a) Dresser shall indemnify, defend and hold harmless Indresco, each of its directors, officers, employees and agents and each Affiliate of Indresco from and against any and all Indemnifiable Losses of Indresco or any of its Affiliates arising out of or due to, directly or indirectly, (i) any of the Retained Liabilities, (ii) the failure of Dresser to comply with the "bulk sales" law of any state in which the Transferred Assets are situated and which may be asserted to be applicable to the transfer by Dresser to Indresco of the Transferred Assets, or (iii) any failure to perform, or violation of, any provision of this Agreement, the Related Agreements or any other agreement entered into in connection with this Agreement, which is to be performed or complied with by Dresser.

(b) Indresco shall indemnify, defend and hold harmless Dresser, each of its directors, officers, employees and agents and each Affiliate of Dresser from and against any and all Indemnifiable Losses of Dresser or any of its Affiliates arising out of or due to, directly or indirectly, (i) any of the Assumed Liabilities, or (ii) any failure to perform or violation of any provision of this Agreement, the Related Agreements or any other agreement to be entered into in connection with this Agreement, which is to be performed or complied with by Indresco.

(c) The amount which any party (an "Indemnifying Party") is required to pay to any other party (an "Indemnitee") pursuant to Section 5.02(a) or Section 5.02(b) shall be reduced (including, without limitation, retroactively) by any insurance proceeds and other amounts actually recovered by such Indemnitee in reduction of the related Indemnifiable Loss. Amounts required to be paid are hereafter sometimes collectively called "Indemnity Payments" and are individually called an "Indemnity Payment." If an Indemnitee shall have received an Indemnity Payment in respect of an Indemnifiable Loss and shall subsequently actually receive insurance proceeds or other amounts in respect of such Indemnifiable Loss, then such Indemnitee shall pay to such Indemnifying Party a sum equal to the lesser of the amount of such insurance proceeds or other amounts actually received or the net amount of Indemnity Payments actually received previously. The Indemnitee agrees that the Indemnifying Party shall be subrogated to such Indemnitee under any applicable insurance policy and that the Indemnitee shall not waive any right of subrogation.

(d) (i) If an Indemnitee receives a tax saving by reason of having incurred an Indemnifiable Loss for which such Indemnitee shall have received an Indemnity Payment from an Indemnifying Party, then such Indemnitee shall pay to such Indemnifying Party an amount equal to such tax saving. For purposes of Section 5.02(d) hereof, an Indemnitee shall be deemed to have received a tax saving with respect to an Indemnifiable Loss if, upon the filing of a Federal, state or local income tax return for a taxable year ending on or after the Distribution Date (the "Indemnity Return"), an amount attributable to an Indemnifiable Loss (the "Indemnifiable Loss Deduction") is deductible by the Indemnitee or any of its wholly owned subsidiaries, and an amount attributable to the Indemnity Payment is not includible in gross income by the Indemnitee or any of its wholly owned subsidiaries. If the Indemnity Payment is includible in gross income by the Indemnitee or if the Indemnifying Party claims as a deductible expense or loss an amount attributable to the Indemnity Payment, Indemnitee shall be deemed to have not received a tax saving with respect to an Indemnifiable Loss. Both Dresser and Indresco shall act in good faith to coordinate their tax return filing positions with respect to Indemnity Payments for the periods that include an Indemnity Payment.

(ii) In the event that an Indemnitee will receive a tax saving by reason of an Indemnifiable Loss, such Indemnitee shall pay the Indemnifying Party within thirty (30) days after the filing of an Indemnity Return, a sum equal to the Indemnifiable Loss Deduction multiplied by the highest marginal corporate Federal income tax rate applicable to corporations taxable under Subchapter C of the Internal Revenue Code of 1986, as amended on the date the Indemnity Return is filed (the "Tax Saving Amount").

(iii) In the event that an Indemnitee may receive a tax saving by reason of an Indemnifiable Loss, such Indemnitee shall adopt in good faith, a reasonable tax return filing position so as to report the Indemnifiable Loss Deduction on such returns. The Indemnitee shall have the sole responsibility for the preparation of its tax returns and reporting thereon such Indemnifiable-Loss Deduction. If a dispute arises between the Indemnitee and the Indemnifying Party as to the reasonableness of an Indemnity Return filing position with respect to an Indemnifiable Loss Deduction, such dispute shall be resolved by a nationally recognized public accounting firm selected and approved by both the Indemnitee and Indemnifying Party. The cost of retaining such firm shall be shared by the parties equally, and the decision of the accounting firm shall be binding on the parties.

(iv) There shall be an adjustment to any Tax Saving Amount calculated under Section 5.02(d)(i) hereof in the event of an audit or other proceeding which results in a Final Determination that increases or decreases the amount of the Indemnifiable Loss Deduction reported on the Indemnity Tax Return by the Indemnitee. The Indemnitee shall promptly inform the Indemnitor of any such audit or proceeding and shall attempt in good faith to sustain the tax saving at issue. Upon receiving a written notice of a Final Determination in respect of an Indemnitee Loss Deduction, the Indemnitee shall redetermine the Tax Saving

Amount attributable to the Indemnifiable Loss Deduction under the tax saving calculation of Section 5.02(d)(I), taking into account the Final Determination (the "Restated Tax Saving Amount"). If the Restated Tax Saving Amount is greater than the Tax Saving Amount, the Indemnitee shall pay the Indemnifying Party a sum equal to the difference between such amounts, within thirty (30) days after receiving written notice of the Final Determination. If the Restated Tax Saving Amount is less than the Tax Saving Amount, then the Indemnifying Party shall pay the Indemnitee, within thirty (30) days of receiving written notice from the Indemnitee of the Final Determination, an amount equal to the sum of (1) the difference between such amounts, plus (2) any interest assessed against the Indemnitee by a tax authority which is attributable to any tax assessed as a result of a reduction in the Indemnifiable Loss Deduction effected by the Final Determination.

Section 5.03 Procedure for Indemnification.

(a) If an Indemnitee shall receive notice of the assertion by a person who is not a party to this Agreement of any claim or of the commencement by any such person of any Action (a "Third Party Claim") with respect to which an Indemnifying Party is or may be obligated to make an Indemnity Payment, such Indemnitee shall give such Indemnifying Party prompt notice thereof after becoming aware of such Third Party Claim, specifying in reasonable detail the nature of such Third Party Claim and the amount or estimated amount thereof to the extent then feasible (which estimate shall not be conclusive of the final amount of such claim), provided, however, that the failure of any Indemnitee to give notice as provided in this Section 5.03 shall not relieve the related Indemnifying Party of its obligations under this Article V, except to the extent that such Indemnifying Party is actually prejudiced by such failure to give notice.

(b) An Indemnifying Party may elect to defend, at such Indemnifying Party's own expense and by such Indemnifying Party's own counsel, any Third Party Claim. If an Indemnifying Party elects to defend a Third Party Claim, it shall, within 10 days of notice of such Third Party Claim (or sooner, if the nature of such Third Party Claim so requires), notify the related Indemnitee of its intent to do so, and such Indemnitee shall cooperate in the defense of such Third Party Claim. Such Indemnifying Party shall pay such Indemnitee's actual out-of-pocket expenses (other than officers' or employees' salaries) reasonably incurred in connection with such cooperation. After notice from an Indemnifying Party to an Indemnitee of its election to assume the defense of a Third Party Claim, such Indemnifying Party shall not be liable to such Indemnitee under this Article V for any legal or other expenses subsequently incurred by such Indemnitee in connection with the defense thereof; provided, however, that such Indemnitee shall have the right to employ separate counsel to represent such Indemnitee if, in such Indemnitee's reasonable judgment, a conflict of interest between such Indemnitee and such Indemnifying Party exists in respect of such claim, and in that event the reasonable fees and expenses of such separate counsel shall be paid by such Indemnifying Party. Except as so provided, if an Indemnitee desires to participate in the defense of a Third Party Claim, it may do so but it shall not control the defense and such participation shall be at its sole cost and expense. If an Indemnifying Party elects not to defend against a Third Party Claim, or fails to notify an Indemnitee of its election as provided in this Section 5.03, such Indemnitee may defend, compromise and settle such Third Party Claim; provided, however, that no such Indemnitee may compromise or settle any such Third Party Claim without 10 days prior written notice to such Indemnifying Party and only if settlement is by payment of monetary damages or other money payments. No Indemnifying Party shall consent to entry of any judgment or enter into any compromise or settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnitee of a release from all liability in respect to such Third Party claim.

(c) If an Indemnifying Party chooses to defend any claim, the Indemnitee shall make available to such Indemnifying Party any personnel or any books, records or other documents within its control that are necessary or appropriate for such defense (the cost of copying thereof to be paid by the Indemnifying Party).

(d) Notwithstanding anything else in this Section 5.03, if an offer of settlement or compromise for non-monetary damages is received by an Indemnifying

Party with respect to a Third Party Claim and such Indemnifying Party notifies the related Indemnitee in writing of such Indemnifying Party's willingness to settle or compromise such Third Party Claim, which settlement or compromise does not materially and adversely affect the Indemnitee's business, on the basis set forth in such notice and such Indemnitee declines to accept such settlement or compromise, such Indemnitee may continue to contest such Third Party Claim, free of any participation by such Indemnifying Party, at such Indemnitee's sole expense.

(e) Upon any final determination of a Third Party Claim pursuant to this Section 5.03, except as provided by Section 5.03(d), the Indemnifying Party shall pay promptly on behalf of the Indemnitee, or to the Indemnitee in reimbursement of any amount theretofore required to be paid by it, the amount so determined. Upon the payment in full by the Indemnifying Party of any such amount, the Indemnifying Party shall be subrogated to the rights of such Indemnitee, to the extent not waived in settlement, by the Indemnifying Party, against the persons who made such Third Party Claim with respect to the subject matter of such claim.

(f) Notwithstanding the foregoing provisions of this Section 5.03, there may be Third Party Claims which reasonably could result in both Dresser and Indresco being liable to the other under indemnification provisions of this Agreement. In any such events, the parties shall endeavor, acting reasonably and in good faith, to agree upon a manner of conducting the defense of or settlement of the Third Party Claim with a view to minimizing the legal expenses and associated costs that might otherwise be incurred by the parties, including to the use of the same legal counsel for the defense of such claim.

(g) Except to the extent expressly provided otherwise in this Section 5.03, the indemnification provided for by this Section 5.03 shall not inure to the benefit of any third party or parties and shall not relieve any insurer who would otherwise be obligated to pay any claim of the responsibility with respect thereto or, solely by virtue of the indemnification provisions hereof, provide any subrogation rights with respect thereto.

(h) Any claim on account of an Indemnifiable Loss which does not result from a Third Party Claim shall be asserted by written notice given by the related Indemnitee to the related Indemnifying Party. Such Indemnifying Party shall have a period of 60 days within which to respond thereto. If such Indemnifying Party does not respond within such 60-day period, such Indemnifying Party shall be deemed to have accepted responsibility to make payment and shall have no further right to contest the validity of such Indemnitee's claim. If such Indemnifying Party does respond within such 60-day period and rejects such claim in whole or in part, such Indemnitee shall be free to pursue mediation as provided in Article IX hereof.

(i) If the indemnification provided for in this Section 5.03 is unavailable to an Indemnitee in respect of any Indemnifiable Loss arising out of or related to information contained in the Information Statement or the Form 10, then the Indemnifying Party, in lieu of indemnifying such Indemnitee, shall contribute to the amount paid or payable by such Indemnitee as a result of such Indemnifiable Loss, in such proportion as is appropriate to reflect the relative fault of Indresco, each of its directors, each of its officers who have signed any registration statement and each Affiliate of Indresco (a "Indresco Party") on the one hand and Dresser and each Affiliate of Dresser (a "Dresser Party") on the other hand in connection with the statements or omissions which resulted in such Indemnifiable Loss. The relative fault of a Indresco Party on the one hand and of a Dresser Party on the other hand shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by a Indresco Party on the one hand or a Dresser Party on the other hand.

the execution and delivery of any amendatory agreements and the making of the filings and applications contemplated by this Agreement shall satisfy the provisions of all applicable agreements or the requirements of all applicable laws or judgments, it being understood and agreed that, subject to Section 6.03(b) hereof, Indresco shall bear the economic and legal risk that any necessary consents or approvals are not obtained or that any requirements of law or judgments are not complied with.

Section 6.03 Further Assurances: Subsequent Transfers.

(a) Each of Dresser and Indresco will execute and deliver such further instruments of conveyance, transfer and assignment and will take such other actions as each of them may reasonably request of the other in order to effectuate the purposes of this Agreement and to carry out the terms hereof. Without limiting the generality of the foregoing, at any time and from time to time after the Distribution Date, at the request of Indresco and without further consideration, Dresser will execute and deliver to Indresco such other instruments of transfer, conveyance, assignment and confirmation and take such action as Indresco may reasonably deem necessary or desirable in order to more effectively transfer, convey and assign to Indresco and to confirm Indresco's title to all of the Transferred Assets, to put Indresco in actual possession and operating control thereof and to permit Indresco to exercise all rights with respect thereto (including, without limitation, rights under contracts and other arrangements as to which the consent of any third party to the transfer thereof shall not have previously been obtained) and

Indresco will execute and deliver to Dresser all instruments, undertakings or other documents and take such other action as Dresser may reasonably deem necessary or desirable in order to have Indresco properly assume and discharge the Assumed Liabilities and relieve Dresser of any Liability or obligations with respect thereto and evidence the same to third parties. Notwithstanding the foregoing, Dresser and Indresco shall not be obligated, in connection with the foregoing, to expend monies other than reasonable out-of-pocket expenses and attorneys' fees.

(b) Dresser and Indresco will use their best efforts to obtain any consent required to assign all agreements, leases, licenses and other rights of any nature whatsoever relating to the Transferred Assets to Indresco, provided, however, that Dresser shall not be obligated to pay any consideration therefor (except for filing fees and other administrative charges) to the third party from whom such consents, approvals and amendments are requested. In the event and to the extent that Dresser is unable to obtain any such required consent, (i) Dresser shall continue to be bound thereby and (ii) unless not permitted by law or the terms thereof, Indresco shall pay, perform and discharge fully all the obligations of Dresser thereunder from and after the Distribution Date and indemnify Dresser for all Indemnifiable Losses arising out of such performance by Indresco. Dresser shall, without further consideration therefor, pay, assign and remit to Indresco promptly all monies, rights and other considerations received in respect of such performance. Dresser shall exercise or exploit its rights and options under all such agreements, leases, licenses and other rights and commitments referred to in this Section 6.03(b) only as reasonably directed by Indresco and at Indresco's expense. If and when any such consent shall be obtained or such agreement, lease, license or other right shall otherwise become assignable or able to be novated, Dresser shall promptly assign and novate all its rights and obligations thereunder to Indresco without payment of further consideration and Indresco shall, without the payment of any further consideration therefor, assume such rights and obligations.

(c) All Bids, Quotations and Proposals included in the Transferred Assets shall be transferred to Indresco to the extent permitted by law. Dresser and Indresco shall work together and use their best efforts to preserve such Bids, Quotations and Proposals and facilitate their award consistent with applicable laws and regulations. Any contracts awarded pursuant to an outstanding Bid, Quotation or Proposal shall be considered an agreement and treated in the same manner as provided for in the last sentence of Section 6.03(b) hereof.

Section 6.04 Indresco Board. Indresco and Dresser shall take all actions which may be required to elect or otherwise appoint, as of the Distribution Date, those individuals designated in the Information Statement to be directors or officers of Indresco.

Section 6.05 Resignations. On or prior to the Distribution Date, Dresser shall cause all directors and officers of Dresser who are not designated in the Information Statement to be directors and officers of Indresco following the Distribution Date to resign from their position as a director or officer of Indresco.

Section 6.06 Certain Intercompany Arrangements.

(a) Except as specifically provided by this Agreement or the Related Agreements, to the extent that Dresser, on the one hand, and the Transferred Businesses, on the other hand, are providing or selling at the Distribution Date to the other, or charging each other for, any services or products, pursuant to any written agreement or arrangement, then such agreement or arrangement shall not be deemed altered, amended or terminated as a result of this Agreement or the consummation of the transactions contemplated hereby; provided, however, that following the Distribution Date any services and products to be provided which were not subject to a written agreement or arrangement shall be provided only on an arm's length basis. Nothing in this Section 6.06 shall require or authorize Dresser or Indresco to provide and charge each other for any services other than on the terms and conditions specified in the Corporate Services Agreement.

(b) Any intercompany receivable, payable, loan or cash overdraft between Dresser and Indresco outstanding on the Distribution Date shall not be deemed altered, amended or terminated as a result of this Agreement or the consummation of the transactions contemplated hereby and shall be settled between Dresser and Indresco within the term of such debt, or if no terms are provided, within 60 days following the Distribution Date, except for amounts being contested in good faith.

Section 6.07 Other Agreements. As of the Distribution Date, Dresser and Indresco shall enter into the Corporate Services Agreement, Environmental Matters Agreement, Intellectual Property Agreement, Employee Matters Agreement, and the Tax Sharing Agreement.

Section 6.08 Sales and Transfer Taxes. Indresco and Dresser agree to cooperate to determine the amount of sales, transfer or other taxes or fees (including, without limitation, all real estate, patent, copyright and trademark transfer taxes and recording fees) payable in connection with the transactions contemplated by this Agreement (the "Transaction Taxes"). Dresser agrees to file promptly and timely the returns for such Transaction Taxes with the appropriate taxing authorities and remit payment of the Transaction Taxes and Indresco will join in the execution of any such tax returns or other documentation.

Section 6.09 Proration of Taxes, Lease and Utility Payments. All real property, personal property and similar taxes and installments of general and special assessments, if any, with respect to the Transferred Assets shall be prorated on the basis of actual days elapsed between the commencement of the relevant fiscal tax year and the Distribution Date, based on a 365-day year and the most recent tax statements or bills applicable thereto, without later adjustment. Any installment of rental payments with respect to leases that are part of the Transferred Assets or utility or similar periodic charges incurred by the Transferred Businesses which are payable with respect to the current period in which the Distribution Date occurs shall be prorated between Dresser and Indresco on the basis of actual days elapsed from the first day of the relevant period to the Distribution Date. Dresser shall be responsible for all such taxes, payments and charges allocable to all times prior to and including the Distribution Date and Indresco shall be responsible for all such taxes, payments and charges allocable to all times after the Distribution Date. Following the Distribution Date, each party shall, upon request of the other party, immediately reimburse the other party for any such taxes, payments and charges or other expenses for which said party is responsible but have been paid by or are owed by the other party and for collections made by one party on behalf of the other party.

Section 6.10 Signs; Use of Dresser Name. Within 120 days after the Distribution Date, Indresco, at its own expense, shall remove (or, if necessary, on an interim basis cover up) any and all exterior and interior signs and identifiers which refer or pertain to Dresser at the Transferred Businesses. After such period, Indresco shall not use or display the name "Dresser" or other trademarks, tradenames or their identifiers owned by or licensed to Indresco pursuant to the Intellectual Property Agreement ("Non-Permitted Names"), without the prior written consent of Dresser.

Section 6.11 Products, Supplies and Documents. Indresco shall have the right to use existing products, supplies and documents (including, but limited to, purchase orders, forms, labels, shipping materials, catalogues, sales brochures, operating manuals, instructional documents and similar materials, and advertising material) being transferred to it pursuant to this Agreement which have imprinted thereon the name "Dresser" or trademarks, logotypes or variations comprising the name "Dresser" or a Non-Permitted Name, for a period not to exceed six months following the Distribution Date (or for such longer period as necessary to fulfill existing contractual relationships under contracts which have not been novated), provided that Indresco agrees (i) to use only those such supplies and documents existing in inventory as of the Distribution Date, (ii) to conspicuously state on such supplies and documents when used that they are no longer documents of Dresser and (iii) not to order or utilize in any manner any additional supplies and documents containing the name "Dresser".

Section 6.12 Plant Closing and Layoffs. Indresco agrees that it shall not, at any time during the 90-day period following the Distribution Date, effectuate (i) a "plant closing" as defined in the Worker Adjustment and Retraining Notification Act of 1988 (the "WARN Act") affecting any site of employment or operating units within any site of employment of the Transferred Businesses or (ii) take any action to precipitate a "mass layoff" as defined in the WARN Act. Indresco agrees to indemnify Dresser and to defend and hold Dresser harmless from and against any and all claims, losses, damages, expenses, obligations and liabilities (including attorney's fees and other costs of defense) which Dresser may incur in connection with any suit or claim of violation brought against Dresser under the WARN Act, which relate, in whole or in part, to actions taken by Indresco with regard to any site of employment Indresco or operating units within any site of employment of the Transferred Businesses.

Section 6.13 Cooperation and Non-Competition.

(a) Dresser and Indresco expressly acknowledge that Dresser and INDRESCO are and, after the Distribution Date, will remain engaged, either directly or through their subsidiaries and affiliates, in certain activities which may be competitive with the business of Indresco or Dresser, and nothing contained in this Agreement shall be construed in such a manner as to prohibit Dresser or Indresco or any of their subsidiaries or affiliates from continuing to engage in the same business activities in which they are engaged on the Distribution Date.

Section 6.14 Fiscal Year. Indresco hereby agrees and covenants that it shall not change its fiscal year for financial or tax purposes until after the beginning of the fiscal year of Indresco beginning November 1, 1992.

## ARTICLE VII. ACCESS TO INFORMATION AND SERVICES.

Section 7.01 Provision of Corporate Records. As soon as practicable after the Distribution Date, Dresser shall deliver to Indresco all Books and Records. Such Books and Records shall be the property of Indresco, but shall be retained and made available readily to Dresser for review and duplication until the earlier of (i) notice from Dresser that such records are no longer needed by Dresser or (ii) the eight anniversary of the Distribution Date.

Section 7.02 Access to Information. From and after the Distribution Date, Dresser and Indresco shall afford to each other and to each other's authorized accountants, counsel and other designated representatives reasonable access and duplicating rights (with copying costs to be borne by the requesting party) during normal business hours to all Books and Records and other data and information (collectively, "Information") within each other's possession relating to the Transferred Assets, the Transferred Businesses and the Transferred Employees, insofar as such access is reasonably required by Dresser or Indresco, as the case may be, (and shall use reasonable efforts to cause persons or firms possessing relevant Information to give similar access). Information may be requested under this Article VII for, without limitation, audit, accounting, claims, litigation and tax purposes, as well as for purposes of fulfilling disclosure and reporting obligations.

Section 7.03 Production of Witnesses. From and after the Distribution Date, Dresser and Indresco shall use reasonable efforts to make available to each other, upon written request, its officers, directors, employees and agents as witnesses to the extent that any such person may reasonably be required in connection with any legal, administrative or other proceedings in which the requesting party may from time to time to involved. Dresser and Indresco agree to reimburse each other for reasonable out-of-pocket expenses (but not labor charges or salary payments) incurred by the other in connection with providing witnesses pursuant to this Section 7.03.

Section 7.04 Retention of Records. Except as otherwise required for a longer period by law or agreed to in writing, Dresser and Indresco shall retain, for a period of at least eight years following the Distribution Date, all material Information. Notwithstanding the foregoing, in lieu of retaining any specific Information, Dresser or Indresco may offer in writing to deliver such Information to the other and, if such offer is not accepted within 90 days, the offered Information may be destroyed or otherwise disposed of at any time. If a recipient of such offer shall request in writing prior to the scheduled date for such destruction or disposal that any of the Information proposed to be destroyed or disposed of be delivered to such requesting party, the party proposing the destruction or disposal shall promptly arrange for the delivery of such of the Information as was requested (at cost of requesting party).

Section 7.05 Confidentiality. Dresser and Indresco shall hold, and shall cause its officers, employees, agents, consultants and advisors to hold, in strict confidence, unless compelled to disclose by judicial or administrative process or, in the opinion of its independent, legal counsel, by other requirements of law, all non-public Information concerning the other party furnished it by such other party or its representatives pursuant to this Agreement (except to the extent that such Information can be shown to have been (a) available to such party on a non-confidential basis prior to this disclosure by the other party, (b) in the public domain through no fault of such party or (c) later lawfully acquired from other sources by the party to which it was furnished), and each party shall not release or disclose such Information to any other person, except its auditors, attorneys, financial advisors, bankers and other consultants and advisors who shall be bound by the provisions of this Section 7.05. Each party shall be deemed to have satisfied its obligation to hold confidential Information concerning or supplied by the other party if it exercises the same care as it takes to preserve confidentiality for its own similar Information. Dresser and Indresco agree with each other that each will maintain, preserve and assert, unless waived in writing by the other, all attorney-client and work product privileges applicable to documents and other Information which relates, directly or indirectly, to the Transferred Businesses for any period prior to the Distribution Date.

Section 7.06 Privileged Matters.

(a) Dresser and Indresco agree that Indresco will maintain, preserve and assert all privileges arising under or relating to the attorney-client relationship, including but not limited to the attorney-client and work product privileges, that relate directly or indirectly to the Transferred Businesses for any period prior to the Distribution Date ("Privilege" or "Privileges"). Dresser shall be entitled to control the assertion or waiver of any and all Privileges in perpetuity. Indresco shall not waive any Privilege which could be asserted under applicable law without the prior written consent of Dresser. The rights and obligations created by this paragraph shall apply to all Information as to which, but for the Distribution, Dresser would have been entitled to assert or did assert the protection of a Privilege ("Privileged Information"), including but not limited to (i) any and all Information generated prior to the formation of Indresco but which, after the Distribution is, in the possession of Indresco; (ii) all communications subject to a Privilege occurring prior to the formation of Indresco between counsel for Dresser and any person who, at the time of the communication, was an employee is or becomes a Indresco employee; and (iii) all Information generated, received or arising after the Distribution Date that refers or relates to Privileged Information generated, received or arising prior to the Distribution Date.

(b) Upon receipt by Indresco of any subpoena, discovery or other request which arguably calls for the production or disclosure of Privileged Information or if Indresco obtains knowledge that any current or former employee of Indresco has received any subpoena, discovery or other request which arguably calls for the production or disclosure of Privileged Information, Indresco shall promptly notify Dresser of the existence of the request and shall provide Dresser a reasonable opportunity to review the Information and to assert any rights it may have under this Section 7.06 or otherwise to prevent the production or disclosure of Privileged Information. Indresco will not produce or disclose any Information arguably covered by a Privilege under this Section 7.06 unless (a) Dresser has provided its express written consent to such production or disclosure, or (b) a court of competent jurisdiction has entered a final, nonappealable order finding that the Information is not entitled to protection under any applicable privilege. Dresser shall be responsible and shall reimburse INDRESCO for all out of pocket costs reasonably incurred and any liabilities assessed in respect of INDRESCO's asserting Privilege under this Article VII.

(c) Dresser's transfer of Books and Records and other Information to Indresco, and Dresser's agreement to permit Indresco to possess Privileged Information occurring or generated prior to the formation of Indresco, are made in reliance on Indresco's agreement, as set forth in this Section 7.06, to maintain the confidentiality of Privileged Information and to assert and maintain all applicable Privileges. The access to information being granted pursuant to Section 7.02 hereof, the agreement to provide witnesses and individuals pursuant to Section 7.03 hereof and transfer of Privileged

Information to Indresco pursuant to this Agreement shall not be deemed a waiver of any Privilege that has been or may be asserted under this Section 7.06 or otherwise. Nothing in this Distribution Agreement shall operate to reduce, minimize or condition the rights granted to Dresser in, or the obligations imposed upon Indresco by, this Section 7.06.

## ARTICLE VIII. INSURANCE.

Section 8.01 General. Dresser shall keep in effect all policies under its Insurance Program in effect as of the date hereof insuring the Transferred Assets and operations of the Transferred Businesses until 12:00 midnight on the Distribution Date, unless Indresco shall have earlier obtained appropriate coverage and notified Dresser in writing to that effect. Indresco agrees that it will purchase, to the extent available at a reasonable cost, insurance policies which (i) provide substantially the same coverage as the policies maintained by Dresser under the Insurance Program with respect to the Transferred Businesses and (ii) allow Indresco to make claims for occurrences prior to the Distribution Date. Dresser shall, if so requested by Indresco, use reasonable efforts to assist Indresco in obtaining such initial insurance coverage for Indresco from and after the Distribution Date in such amounts as are agreed upon by Dresser and Indresco. Following the Distribution Date, each of Dresser and Indresco shall cooperate with and assist the other party in the prevention of conflicts or gaps in insurance coverage and/or collection of proceeds.

Section 8.02 <u>Certain Insured Claims</u>. Notwithstanding anything to the contrary in this Agreement, Dresser will indemnify and hold Indresco harmless from and against any and all Indemnifiable Losses resulting, directly or indirectly, from claims made or deemed made (under the applicable insurance policy) prior to the Distribution Date which relate to the Transferred Businesses and which arise from or relate to events or occurrences prior to the Distribution Date, if such claims would be covered by the Insurance Program (including coverage provided by Property and Casualty Insurance, Ltd., a 100% owned subsidiary of Dresser, provided that such Indemnity shall not exceed, in the aggregate, the amounts reflected on Schedule 8.02 attached hereto); and <u>provided further</u>, however, that Dresser shall be required to indemnify and hold Indresco harmless for any Indemnifiable Loss only up to the amount that is covered by the Insurance Program for each such claim and collected or received by Dresser.

In addition, Dresser further agrees to indemnify and hold Indresco harmless from and against any and all Indemnifiable Losses resulting, directly or indirectly, from claims made or deemed made which arise from events or occurrences prior to March 1, 1986, but are made or deemed made after the Distribution Date, if such claims would be covered by the Insurance Program; provided, however, that Dresser shall indemnify and hold Indresco harmless for any Indemnifiable Loss only up to the amount that is covered by the Insurance Program for each such claim and collected or received by Dresser. Dresser will use its reasonable commercial efforts to obtain coverage for the Indresco claims that may be made against current and past insurers. In the event that Dresser does not obtain coverage for any such claim, Dresser will, upon the request of INDRESCO made pursuant to this Section 8.02, attempt to obtain said coverage through litigation against the applicable insurer(s). All costs and expense, including attorneys fees, for said litigation and any penalties or other amounts assessed or losses incurred as a result of any such litigation shall be paid or reimbursed by INDRESCO. The indemnity provided under this paragraph related to claims made after the Distribution Date shall also be limited as to claims against Property and Casualty Insurance, Ltd. as provided in this Section 8.02 and Schedule 8.02 attached hereto, and nothing in this paragraph shall be construed to increase such limited amounts. To the extent that Indresco seeks any indemnity pursuant to this Section 8.02, the provisions of Article V hereof shall apply thereto, and Indresco shall be treated as the Indemnitee and Dresser shall be treated as the Indemnifying Party under such provisions; provided, however, that Indresco shall pay all out of pocket costs which are reasonably incurred by Dresser after the Distribution Date in defending any such claims under an insurance policy relating to the Transferred Businesses and Indresco shall make available to Dresser such of its employees as Dresser may reasonably request as witnesses or deponents in connection with Dresser's defense of claims, at Indresco's sole cost and expense.

## ARTICLE IX. <u>MEDIATION</u>.

Section 9.01 <u>Mediation and Binding Arbitration</u>. If a dispute arises between Dresser and Indresco as to the interpretation or the implementation of this Agreement, the Related Agreements or any other agreement entered into pursuant hereto, including, without limitation, any matter involving an Indemnifiable Loss, Dresser and Indresco agree to use the following procedures, in lieu of either party pursuing other available remedies and as the sole remedy, to resolve the dispute.

Section 9.02 <u>Initiation</u>. A party seeking to initiate the procedures shall give written notice to the other party, describing briefly the nature of the dispute. A meeting shall be held between the parties within 10 days of the receipt of such notice, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.

Section 9.03 <u>Submission to Mediation</u>. If, within 30 days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to mediation in accordance with the Center for Public Resources Model ADR Procedure - Mediation of Business Disputes, as modified herein, and to bear equally the costs of the mediation.

Section 9.04 Selection of Mediator. The parties will jointly appoint a mutually acceptable mediator, seeking assistance in such regard from the Center for Public Resources or another mutually agreed-upon organization if they have been unable to agree upon such appointment within 20 days from the conclusion of the negotiation period.

Section 9.05 Mediation. The parties agree to participate in good faith in the mediation and negotiations related thereto for a period of 30 days following the initial mediation session. If the parties are not successful in resolving the dispute through the mediation by the end of such 30-day period, then the parties agree to submit the matter to binding arbitration in accordance with the Center for Public Resources Rules for Non-Administered Arbitration of Business Disputes, as modified herein, by a sole arbitrator, in Dallas, Texas, selected in accordance with the provisions of Section 9.06(c) hereof. The arbitration shall be governed by the United States Arbitration Act, 9. U.S.C. § 1-16, and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof.

Section 9.06 Selection of Arbitrator. The parties shall have 10 days from the end of the mediation period to agree upon a mutually acceptable neutral person not affiliated with either of the parties to act as arbitrator. If no arbitrator has been selected within such time, the parties agree jointly to request the Center for Public Resources or another mutually agreed-upon organization to supply within 10 days a list of potential arbitrators with qualifications as specified by the parties in the joint request. Within five days of receipt of the list, the parties shall independently rank the proposed candidates, shall simultaneously exchange rankings, and shall select as the arbitrator the individual receiving the highest combined ranking who is available to serve.

Section 9.07 Cost of Arbitration. The costs of arbitration shall be apportioned between Dresser and Indresco as determined by the arbitrator in such manner as the arbitrator deems reasonable taking into account the circumstances of the case, the conduct of the parties during the proceeding, and the result of the arbitration.

ARTICLE X. MISCELLANEOUS.

Section 10.01 Complete Agreement. This Agreement, including the Schedules, Annexes and Exhibits and the agreements and other documents referred to herein, shall constitute the entire agreement between Dresser and Indresco with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings with respect to such subject matter.

Section 10.02 Expenses. Except as (i) otherwise provided in this Agreement, any Related Agreement or any other agreement being entered into by Dresser and Indresco pursuant to this Agreement or (ii) previously paid by Dresser and not reflected in the financial statements or books of Indresco on the Distribution Date as owed by Indresco, all costs and expense of Dresser or Indresco incurred in connection with the Distribution (whether or not payable as of the Distribution Date) and with the consummation of the transactions contemplated by this Agreement shall be as accrued and paid by Dresser. The total of such payments or accruals shall be transferred by Dresser to INDRESCO as a deferred charge to be born by Indresco as expense recognized in INDRESCO's financial statements. Such costs and expenses shall include, without limitation, investment banking, legal, accounting and printing costs and expenses and transfer taxes.

Section 10.03 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware (regardless of the laws that might otherwise govern under applicable principles of conflicts law) as to all matters, including, without limitation, matters of validity, construction, effect, performance and remedies.

Section 10.04 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of service if served personally on the party to whom notice is given, (ii) on the day of transmission if sent via facsimile transmission to the facsimile number given below, provided telephonic confirmation of receipt is obtained promptly after completion of transmission, (iii) on the business day after delivery to an overnight courier service or the Express mail service maintained by the United States Postal Service, provided receipt of delivery has been confirmed, or (iv) on the fifth day after mailing, provided receipt of delivery is confirmed, if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, properly addressed and return-receipt requested, to the party as follows:

| | |
|---|---|
| If to Dresser: | Dresser Industries, Inc.<br>1600 Pacific<br>Dallas, Tx 75221 |
| If to Indresco: | INDRESCO Inc.<br>2121 San Jacinto Suite 2500<br>Dallas, Tx 75201-2731 |

Any party may change its address by giving the other party written notice of its new address in the manner set forth above.

Section 10.05 Amendment and Modification. This Agreement may be amended, modified or supplemented only by written agreement of the parties.

Section 10.06 Termination. This Agreement may be terminated and the Distribution abandoned at any time prior to the Distribution Date by and in the sole discretion of Dresser without the approval of Indresco. In the event of such termination, no party shall have any liability of any kind to any other party.

Section 10.07 Successors and Assigns. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either party without the prior written consent of the other party.

Section 10.08 No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and is not intended to confer upon any other person except the parties hereto any rights or remedies hereunder.

Section 10.09 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 10.10 Interpretation. The Article and Section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement. As used in this Agreement, the term "person" shall mean and include an individual, a partnership, a joint venture, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof.

Section 10.11 Annexes, Etc. The Annexes, Schedules and Exhibits shall be construed with and as an integral part of this Agreement to the same extent as if the same had been set forth verbatim herein.

Section 10.12 Legal Enforceability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. Any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the day and year first above written.

Dresser Industries, Inc.

By: ______________________
B. D. St. John
Vice Chairman

INDRESCO Inc.

By: ______________________
Chairman

**Annex I**

**Assumed Liabilities**

Assumed Liabilities. All Liabilities and obligations relating to or arising from the operation of the Transferred Businesses (Other than Retained Liabilities), whether before or after the Distribution Date, including but not limited to:

(a) all Liabilities and obligations which are set forth, reflected, disclosed or reserved for on the Closing Balance Sheet;

(b) all Liabilities and obligations of Dresser pursuant to, under or relating to all agreements, contracts and leases of Dresser applicable to the Transferred Businesses;

(c) all Bids, Quotations and Proposals and all agreements and contracts awarded to Dresser, whether before or after the Distribution Date, relating to or pursuant to all outstanding Bids, Quotations and Proposals submitted or made by Dresser and to be performed by the Transferred Businesses;

(d) all warranty, bid bonds, performance guarantees and similar obligations entered into or made in the course of business of the Transferred Businesses with respect to its products or operations;

(e) all Liabilities and obligations of Dresser pursuant to and under all Collective Bargaining Agreements to the extent such agreements cover Employees employed in the Transferred Businesses;

(f) the Liabilities and obligations with respect to Employees being assumed by Indresco pursuant to this Agreement and to the Employee Matters Agreement attached hereto as Exhibit B;

(g) the Liabilities and obligations being assumed by or agreed to be performed by Indresco pursuant to any other agreement being entered into in connection with the Agreement, including, without limitation the Related Agreements;

(h) the Liabilities and obligations under the Bank Credit Facility; and

(i) the Liabilities and obligations relating to all Actions related to or arising out of the operations of the Transferred Businesses, other than those specified as Retained Liabilities.

(j) All Liabilities and obligations under any bonds, guarantees (specifically including Dresser's guarantees of KDC's debt), letters of credit, or any other security or collateral posted or issued by Dresser in respect of the Transferred Businesses. It is further agreed, notwithstanding anything to the contrary herein provided or provided in such bond, guaranty or other security, that Dresser may upon incurring any Liability pursuant to such guaranty or bond, at its sole option, proceed directly against Indresco pursuant to its assumption and indemnity of said obligations under this Agreement, and Dresser shall not be required to proceed against, or exhaust its remedies against, the beneficiary of such bond or guaranty.

## Annex II

Retained Liabilities

Retained Liabilities: the following Liabilities and obligations as of the Distribution Date:

(a) all Liabilities and obligations with respect to Employees provided in the Employee Matters Agreement as being Liabilities and obligations of Dresser.

(b) all Liabilities and obligations under the Related Agreements which are Liabilities or obligations of Dresser.

(c) all Liabilities of Harbison-Walker operations resulting from or exposure to or inhalation of asbestos and silica for third party claims initially filed prior to the Distribution Date.

## Annex III

## Transferred Assets

Transferred Assets: the following assets and properties as of the Distribution Date:

(a) the real properties owned by Dresser and used exclusively in the Transferred Businesses (including the former Harbison-Walker property at Cape May, NJ) and including those which are listed or referenced in the Information Statement, including buildings, structures and improvements (including construction in progress) located thereon, fixtures contained therein and appurtenances thereto;

(b) all of Dresser's right and interest in, to and under all leases applicable to the Transferred Businesses;

(c) all of Dresser's right and interest in, to and under all contracts and agreements relating to the Transferred Businesses and all Bids, Quotations and Proposals;

(d) all machinery, equipment and other items of tangible personal property (including construction in progress) owned by Dresser which are utilized principally in the Transferred Businesses;

(e) all rights and interests of Dresser in, to and with respect to the intellectual property rights, trademarks, trade secrets and know-how being transferred and assigned to Indresco pursuant to, and in accordance with, the Intellectual Property Agreement;

(f) all assets and properties included on the Closing Balance Sheet;

(g) all of the Books and Records of Dresser;

(h) all inventories of raw materials, work-in-process, finished products, supplies and spare parts which at the Distribution Date are owned by Dresser and relate principally to the Transferred Businesses and any property under bailment relating to the Transferred Businesses;

(i) all permits and licenses held by Dresser which are transferable and which relate principally to the Transferred Businesses;

(j) all intangible assets, other than intellectual property rights, of Dresser used solely in the Transferred Businesses, including customer lists, marketing and other data;

(k) employee receivables, temporary and permanent travel advances and funds advanced for travel not yet taken relating to Transferred Employees and all petty cash funds in the possession of Transferred Businesses and all prepayments and deposits;

(l) all rights and interests of Dresser in, to and under the Collective Bargaining Agreements to the extent such agreements cover Transferred Employees;

(m) all supplies, purchase orders, forms, labels, shipping material, catalogues, sales brochures, operating manuals, instructional documents and advertising material held for use by the Transferred Business;

(n) the following shares of stock in the entities designated

(i) Worthington International Holdings, Inc.;

(ii) Indresco Canada, Inc.;

(iii) 50% of the Stock of Airetool and Yost Superior Realty, Inc.; and

(iv) SDC Corporation (50%)

(o) all trucks, automobiles and other vehicles which are owned by Dresser and used principally in the Transferred Businesses; and

(p) all vessels and barges owned by Dresser and which are used in the Transferred Businesses.

(q) cash in the amount of US $5,000,000.00 in addition to the cash and cash equivalents reflected on the Closing Date Balance Sheet.

Notwithstanding anything to the contrary in this Annex III or the Agreement, Transferred Assets shall not include:

(a) an undivided US $5,000,000.00 interest in U.S. accounts receivable as reflected on the Closing Date Balance Sheet, which amount shall be paid to Dresser by Indresco on or before 60 days following the Distribution Date, provided, that not less than US $10 million of U.S. accounts receivable have been collected by Indresco at such date.

(b) any books or records relating to the Transferred Businesses which Dresser is required by law to retain in its possession;

(c) any right, title or interest of Dresser in any Federal, state or local or foreign tax refund (including any income with respect thereto) relating to the operations of the Transferred Businesses prior to the Distribution Date;

(d) any accrued amounts with respect to any Retained Liabilities.

**Schedule 8.02**
to the Distribution Agreement
between Dresser and Indresco
dated ____________, 1992

**Maximum Liability of Property Casualty Insurance Limited**

Attached

| Claim Number | Date of Loss | Claimant | Loc Code | Cov | Incurred Indemnity | Paid Indemnity | Paid Expenses |
|---|---|---|---|---|---|---|---|
| **POLICY YEAR 1986** | | | | | | | |
| 105/07216 | 11/04/85 | ROTICH DANIEL | 0701 | 27 | 20,974 | 0 | 2,837 |
| 040/J1819 | 2/22/86 | LOHR WILLIAM (FATALITY) | 1127 | 27 | 150,000 | 0 | 5,424 |
| 090/127862 | 3/07/86 | ALBRIGHT DENNIS | 1112 | 27 | 30,000 | 0 | 70,497 |
| 220/AK144 | 7/15/86 | BROWN HOWARD | 1202 | 27 | 500,000 | 0 | 224,918 |
| 090/135021 | 7/16/86 | PLATT WILLIAM | 1112 | 27 | 300,000 | 0 | 52,844 |
| 094/764610 | 9/12/86 | COCHRAN WARREN | 1202 | 27 | 5,000 | 0 | 7,434 |
| 090/140759 | 9/22/86 | ANDERSON RAYMOND | 1202 | 27 | 5,000 | 0 | 20,438 |
| **POLICY YEAR 1987** | | | | | | | |
| 011/553448 | 1/07/87 | PACE JAMES E | 1201 | 27 | 1,000 | 0 | 6,752 |
| 724/A8760 | 1/18/87 | PARSON R A (FATALITY) | 1301 | 27 | 10,000 | 0 | 0 |
| 421/A5369 | 2/02/87 | CORPORON SANDRA | 1301 | 20 | 10,000 | 0 | 22,247 |
| 094/844218 | 2/16/87 | ABELS FLOYD | 1544 | 27 | 7,500 | 0 | 5,239 |
| 043/612034 | 4/01/87 | WOOD RAYMOND | 1127 | 27 | 150,000 | 0 | 31,195 |
| 043/654613 | 7/16/87 | MARTIN RICHARD | 1221 | 27 | 100 | 0 | 497 |
| 090/150202 | 7/17/87 | BRILL JAMES | 1202 | 27 | 50,000 | 0 | 7,349 |
| 011/637830 | 7/20/87 | TRNKA ROBERT | 1221 | 20 | 1,000 | 0 | 4,443 |
| 090/169320 | 7/25/87 | BALDWIN NORMAN | 1202 | 27 | 10,000 | 0 | 3,025 |
| 021/079016 | 7/31/87 | GREENWOOD PAUL EDWARD | 1221 | 27 | 10,000 | 0 | 3,384 |
| 009/508555 | 8/13/87 | DWYER KELLY (FATALITY) | 1202 | 27 | 40,000 | 0 | 11,301 |
| 055/U0702 | 8/17/87 | LAWTON WILLIAM C | 1202 | 27 | 100 | 0 | 0 |
| 090/324822 | 8/24/87 | MORELAND MARLEY JR | 1112 | 27 | 1,000 | 0 | 71,356 |
| 011/637829 | 10/02/87 | GOLD CHARLES | 1301 | 20 | 50,050 | 0 | 2,221 |
| **POLICY YEAR 1988** | | | | | | | |
| 074/629147 | 12/17/87 | REYES J | 1239 | 27 | 16,000 | 0 | 5 |
| 011/629446 | 1/25/88 | PYRRMUS AB | 1221 | 20 | 100 | 0 | 272,540 |
| 008/968374 | 1/27/88 | PROCTOR JOHN | 1112 | 27 | 5,000 | 0 | 0 |
| 006/867488 | 2/24/88 | OWENS EDWARD P | 1112 | 27 | 20,000 | 0 | 0 |
| 077/743468 | 2/26/88 | CRISCI ANTHONY | 1202 | 27 | 12,500 | 0 | 4,271 |
| 018/641660 | 3/14/88 | COOTS ROGER | 1112 | 27 | 50,000 | 0 | 98,768 |
| 005/483602 | 5/02/88 | GOINS VERNON | 1202 | 27 | 375,000 | 0 | 121,880 |
| 018/668787 | 6/22/88 | SNELLING EWELL JR | 1112 | 27 | 50,000 | 0 | 9,421 |
| 070/467341 | 7/21/88 | ARLOTTA JOSEPH | 1202 | 27 | 10,000 | 0 | 6,405 |
| 018/641240 | 8/03/88 | ANSCHUTZ RONNIE | 1201 | 20 | 15,000 | 0 | 26,537 |
| 021/078010 | 8/11/88 | ADDY MICHAEL | 1202 | 27 | 5,000 | 0 | 0 |
| 018/669052 | 9/23/88 | SHELTON LEVINA | 1201 | 27 | 200,000 | 0 | 30,425 |
| 081/471861 | 9/23/88 | COLLINS JAMES | 1543 | 20 | 5,000 | 0 | 8,584 |
| 077/823666 | 10/04/88 | BRANDON KEITH | 1544 | 27 | 5,000 | 0 | 0 |
| 021/083444 | 10/13/88 | NOGARAS AB | 0701 | 20 | 10,000 | 0 | 639,026 |
| 005/652852 | 10/24/88 | POIRRIER ULYSSE | 1202 | 27 | 7,500 | 0 | 1,644 |
| **POLICY YEAR 1989** | | | | | | | |
| 018/636006 | 12/01/88 | SMITH KELLY | 1112 | 30 | 4,175 | 0 | 0 |
| 018/761410 | 5/18/89 | LOVEDAY JOHN E | 1112 | 27 | 225,000 | 0 | 1,491 |
| 090/362113 | 6/01/89 | SUSZYNSKI TERRY | 1127 | 27 | 5,000 | 0 | 284 |
| 008/982453 | 7/05/89 | CHASE PATRICK C | 1221 | 27 | 25,000 | 0 | 9,801 |
| 006/81822 | 9/01/89 | CULLER WAYNE L | 1202 | 27 | 100,000 | 0 | 2,278 |

| Claim Number | Date of Loss | Claimant | Loc Code | Cov | Incurred Indemnity | Paid Indemnity | Paid Expenses | [illegible] |
|---|---|---|---|---|---|---|---|---|
| **POLICY YEAR 1990** | | | | | | | | |
| 040/CA958 | 1/24/90 | DENARD ERNEST | 1112 | 27 | 6,000 | 0 | 0 | |
| 220/CX010 | 1/31/90 | MISKINIS EUGENE | 1112 | 20 | 75,000 | 0 | 57,534 | [illegible] |
| 037/J5043 | 4/01/90 | HOUSTON HEAVY EQUIPMENT | 1201 | 20 | 10,000 | 0 | 1,154 | [illegible] |
| 038/AR304 | 6/25/90 | GILBERT FRANKLIN LAMAR | 1202 | 27 | 100,000 | 0 | 35,442 | [illegible] |
| 104/K7661 | 6/27/90 | FLORES TOMASA | 1202 | 27 | 10,000 | 0 | 0 | [illegible] |
| 246/T3628 | 9/12/90 | WALLACE DRILLING | 0601 | 27 | 100,000 | 0 | 0 | [illegible] |
| 040/BU073 | 10/11/90 | WILLIAMS DESMOND | 1126 | 27 | 7,500 | 0 | 16 | |
| **POLICY YEAR 1991** | | | | | | | | |
| 038/AR652 | 11/01/90 | NARDI PRIMO | 1202 | 27 | 100,000 | 0 | 2,018 | [illegible] |
| 220/CR238 | 11/12/90 | JONES TREVOR J | 1112 | 30 | 26,203 | 1,203 | 7,562 | [illegible] |
| 041/FU076 | 11/17/90 | SAVAGE FRED | 1112 | 30 | 19,554 | 1,554 | 4 | [illegible] |
| 255/T5650 | 3/16/91 | TOLLEY PAUL (FATALITY) | 1112 | 27 | 100,000 | 0 | 0 | [illegible] |
| 017/KT442 | 7/17/91 | SHEETS JIM | 0601 | 30 | 100 | 0 | 0 | |
| | | | | | 3,053,356 | 2,757 | 1,890,759 | 3,0[illegible] |
| | | | | | Incurred But Not Reported Reserves | | | 7,2[illegible] |
| | | | | | | | | 10,2[illegible] |