

**TERMS & CONDITIONS****GENERAL TERMS AND CONDITIONS OF SUPPLY  
SULZER Shanghai Engineering & Machine Works Ltd.  
(applicable as per August 1, 2023)**

These Terms and Conditions can be found on the Internet under <https://www.sulzer.com/en/shared/legal/terms-and-conditions>

1. **Definitions**
  - 1.1 "**Affiliated Company**" or "**Affiliate**" means an entity that is controlling, controlled by or under common control of one of any Party. Control means the direct or indirect ownership of fifty per-cent (50%) or more of the equity interest in an entity, or the ability to control the decisions of such entity through the exercise of voting rights.
  - 1.2 "**Applicable Export Laws**" means any applicable export control regulations and/or laws in force at the time of export in the Supplier's country of export and/or, in the case of re-export, in force at the time of re-export in the country of origin of the particular re-exported Export Item.
  - 1.3 "**Change**" means a change in the design, drawings, specifications, shipping instructions, shipment schedules, or any other documents forming part of the Contract, including any alteration, additions, substitutions, amendments, or omissions to the Scope of Supply.
  - 1.4 "**Change Order**" means the documents issued by authorized representatives of Purchaser and Supplier in common agreement after a Change has been requested by Purchaser or Supplier, and which documents rule the modification of the Contract or parts thereof, in particular with respect to the Contract Price, specifications, shipment schedule, warranty, Delivery Date, etc.
  - 1.5 "**Confidential Information**" means proprietary or confidential data, including pricing, terms, documents, specifications, plans or drawings that are respectively not generally known to the public.
  - 1.6 "**Contract**" means the Terms and Conditions contained herein, together with (i) such additional terms as are stated within Supplier's written Quotation, (ii) such specifications, drawings or other documents as are incorporated by reference by Supplier's Quotation, (iii) the Purchase Order to the extent accepted in writing by Supplier (but in the case of the Purchase Order not including any Purchaser's standard terms and conditions contained within it), (iv) a written agreement.
  - 1.7 "**Contract Price**" means the total sum indicated in the Contract or as modified in accordance with these Terms and Conditions. For Services carried out on a time basis, the Contract Price shall be determined in accordance with the rates specified in the Contract.
  - 1.8 "**Day(s)**" means calendar day(s) unless the term Working Day(s) is used.
  - 1.9 "**Delivery Date**" means the date or dates agreed between the Parties with regard to the performance of the Scope of Supply in the Contract or as modified in accordance with these Terms and Conditions.
  - 1.10 "**Disclosing Party**" means the Party disclosing Confidential Information to the other Party.
  - 1.11 "**Effective Date**" means the date agreed in the Contract or the Order Confirmation. If Purchaser expresses its objection to the Order Confirmation within three (3) working days after its receipt, Effective Date shall be the date on which the Parties reach common agreement on the Contract.
  - 1.12 "**End-User**" means the ultimate user and/or the ultimate owner of the Scope of Supply.
  - 1.13 "**Engineering Services**" means engineering work included in the Contract required to be carried out for the delivery of Field Services, Studies and such goods and or services offered.
  - 1.14 "**Equipment**" means skid mounted equipment, process and mass transfer, mixer or other goods which are specified in the Contract.
  - 1.15 "**Export Item**" means any goods or services, including commodities, software or technology provided by Supplier that is required to be exported or re-exported under the Contract.
  - 1.16 "**Field Services**" shall mean the deployment of Supplier personnel, tools and/or techniques to a Purchaser's or End-User's Plant to provide technical assistance with specified maintenance, inspection, installation, repair and/or modification work or other services specified in the Contract.
  - 1.17 "**Final Acceptance**" means the document issued by the Purchaser or the End-User at the beginning of the warranty period or, if no final acceptance document is issued, then the document evidencing shipment of the goods or completion of the services. For consignment goods, Final Acceptance will take place at the date of removal of goods from stock, usually at the point of consumption.
  - 1.18 "**Force Majeure Event**" means an event caused by reasons beyond the reasonable control of Supplier, including by way of example but not limited to natural disasters or acts of God; severe weather conditions, including hurricanes, tornados, and blizzards; acts of terrorism;

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- labor disputes or stoppages; war; government acts or orders (including statutes, non-binding guidelines and recommendations, and governmental acts which may have an indirect material adverse effect on Supplier or Supplier's banking channels); epidemics, pandemics, or outbreak of communicable disease including any resurgence thereof; quarantines; national or regional emergencies; shortage of adequate power or transportation facilities; import, export, and travel restrictions
- 1.19 **"Incoterms"** means, unless otherwise agreed or specified, the latest version as per the Effective Date of the document published under the name "Incoterms" by the International Chamber of Commerce.
- 1.20 **"Installation Services"** shall have the same meanings as **"Field Services"**.
- 1.21 **"Letter of Credit"** means the document referred to in Clause 6.6.
- 1.22 **"Liquidated Damages"** means an expressly stated amount in the Contract to be paid by Supplier as compensation for estimated damage that Purchaser may incur in the event of breach of Contract such as failure to meet Delivery Date or performance guarantee (if applicable). Such expressly stated amount is agreed by the Parties to be a pre-estimate of such damages and is under no circumstances to be considered as penalty. To the extent permitted by law, Liquidated Damages shall be Purchaser's sole remedy for any delay and/or non-achievement of the performance guarantee (if applicable). These liquidated damages shall be Supplier's sole liability.
- 1.23 **"Order Confirmation"** means the document provided by Supplier to Purchaser as a response to Purchaser's purchase order documents either by e-mail, facsimile or as a hardcopy.
- 1.24 **"Party"** or **"Parties"** means Purchaser or Supplier or Purchaser and Supplier.
- 1.25 **"Personal Data"** means any information which are related to an identified or identifiable natural person.
- 1.26 **"Plant"** means the Purchaser or End-User facility for which goods and/ or services are provided by Supplier.
- 1.27 **"Purchase Order"** means the purchase order documents issued by the Purchaser in the version confirmed by the Supplier in the Order Confirmation. In case of non-substantial deviations between said purchase order documents and the Order Confirmation, the version of the Order Confirmation shall become the binding Purchase Order, unless the Purchaser expresses its dissent within three (3) working days after receipt of the Order Confirmation in writing.
- 1.28 **"Purchaser"** means the Party defined as the Purchaser in the Purchase Order, or, if such definition is missing, the Party issuing the Purchase Order.
- 1.29 **"Quotation"** means Supplier's written proposal for the delivery of the Scope of Supply.
- 1.30 **"Receiving Party"** means the Party receiving Confidential Information of the Disclosing Party.
- 1.31 **"Sanctions"** means any trade or economic sanctions (e.g. embargoes, etc.) in force at the time of export in the Supplier's country of export and/or, in the case of re-export, in force at the time of re-export in the country of origin of the particular re-exported Item.
- 1.32 **"Scope of Supply"** means the agreed goods and/or services to be delivered or performed under the Contract.
- 1.33 **"Supplier"** means the Sulzer company which accepted the Purchase Order or signs the Contract.
- 1.34 **"Terms and Conditions"** means these Sulzer General Terms and Conditions of Supply.
- 1.35 **"Warranty Period"** means the time period stipulated in Clauses 9.1 and 9.3 hereof.
- 1.36 **"Working Day"** means a Day other than a Saturday or a Sunday on which banks are open the whole day for general business at the domicile of the Supplier.
- ## 2. General
- 2.1 The Contract supersedes and extinguishes all previous negotiations, representations and/or contractual commitments between the Parties. Any terms and conditions of the Purchaser shall not apply, even if referred to in any accepted Purchase Order. The Terms and Conditions contained in this Contract shall solely apply and replace any previously concluded agreements, terms and conditions or the like.
- An offer by Supplier in its Quotation that does not stipulate an explicit expiration date shall not be binding unless otherwise stated in the Quotation. In this case, the Contract shall be deemed to have been entered into upon written acceptance of the Purchase Order by an authorized representative of Supplier, which may not be modified except in a Change Order.
- 2.2 In case of an inconsistency between the documents within the Contract, the following order of priority shall apply:
- Contract
  - Change Orders and any documents incorporated by reference therein, mutually agreed by both Parties, latest date priority, and clearly identified as "Change Order" to the Contract
  - Supplier's Quotation and all documents incorporated therein by reference
  - These Terms and Conditions
  - Agreed specifications
- 2.3 In these Terms and Conditions, i) headings are for convenience only and shall not affect the interpretation of the Contract, ii) references to "includes", "including" or "such as" shall not be deemed as conclusive, but rather in a sense of "but not limited to".
- ## 3. Delivery
- 3.1 Supplier shall make commercially reasonable efforts to deliver the Scope of Supply latest on the Delivery Date.
- 3.2 In no event shall any period of time specified to calculate the Delivery Date commence earlier than the latest of the below dates:

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- a. Effective Date, or
  - b. Date which is five (5) Days after receipt of Letter of Credit or advance payment from Purchaser, if the provision of a Letter of Credit or advance payment is required, or
  - c. Date of receipt of approval of engineering submissions by Supplier.
- 3.3 The Delivery Date shall be amended if any delay is due to one or more of the following: (i) Force Majeure Event, (ii) Changes or change requests, (iii) Purchaser's failure to fulfill its obligations under the Contract, (iv) delay caused by End-User or by any party engaged by Purchaser, (v) delay in obtaining export licence, (vi) Purchaser's delay in delivery of any documentation, information or approvals to Supplier, (vii) delays caused by a sub-supplier if the sub-supplier was designated by Purchaser or End User and (viii) any other reason beyond Supplier's control.
- 3.4 The Parties' obligations in respect of delivering the Scope of Supply shall be subject to the Incoterm agreed in the Contract, or, if no specific Incoterm has been stated or subsequently agreed in writing, delivery will be made FCA (Supplier's or sub-supplier's facility). Irrespective of the delivery term and for purpose of determining compliance with the Delivery Date, the delivery shall be deemed to have been carried out on the date the Supplier notifies the Purchaser that the Scope of Supply is ready for shipment.
- 3.5 Except in the case of a Force Majeure Event, Purchaser shall reimburse Supplier the additional cost (including overheads and reasonable profit) incurred as a result of any delay not attributable to the Supplier including costs of project prolongation or disruption, extra transportation, storage, insurance, late payment and others.
- 3.6 Unless otherwise expressly agreed in writing in a document signed by Supplier, Supplier shall not be subject to any claims for Liquidated Damages or penalties related to the late delivery of the Scope of Supply or for any failure to satisfy any performance guarantee.
- 3.7 Supplier shall be entitled to engage sub-suppliers for the performance of the Contract.

#### 4. Force Majeure

- 4.1 No delay in or failure of performance by Supplier shall constitute default under the Contract or give rise to any claim for damages or compensation if, to the extent, and for so long as, such delay or non-performance is caused or contributed to by a Force Majeure Event.
- 4.2 Supplier will notify Purchaser in writing of actual or anticipated delay or non-performance of its obligations due to a Force Majeure Event as soon as reasonably possible upon becoming aware of the Force Majeure Event and its possible impact to Supplier.
- 4.3 The delivery and performance dates required for Supplier's obligations and deliverables under the Contract shall be suspended for the duration of such Force Majeure Event.
- 4.4 If the Force Majeure Event continues for more than six (6) months, either Party may cancel the Contract upon fifteen (15) Days written notice to the other Party. In case of termination pursuant to this Clause, Purchaser

shall indemnify Supplier in accordance with Clause 13.2.

#### 5. Transfer of Title and Risk

- 5.1 Unless otherwise required by applicable law, the title to goods contained in the Scope of Supply ("Goods") shall be transferred from Supplier to Purchaser after Supplier has received full payment of the Contract Price.
- 5.2 Until such time as title to the Goods passes in accordance with Clause 5.1, Purchaser shall:
- a) grant Supplier on its request express right to recover its Goods at the Supplier's premises anytime;
  - b) not remove, deface or obscure any identifying mark or packaging on or relating to such Goods;
  - c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; and
  - d) notify the Supplier immediately if it becomes subject to any of the events listed in Clause 12.3(a) or any similar or analogous event.
- 5.3 Risk of loss or damage to the Goods within the Scope of Supply shall pass from Supplier to Purchaser upon delivery according to the applicable Incoterm.

#### 6. Price and Payment

- 6.1 Supplier is entitled to receive payment of the Contract Price on the dates determined in the Contract or a respective Change Order, if any. For work carried out on a time basis, the prices shall be determined in accordance with the rates specified in the Contract. If no agreement on rates has been made, the rates applied by Supplier for other customers and comparable work shall apply. The Contract Price and any part thereof are exclusive of custom duties, withholding taxes, VAT, sales taxes, or similar taxes, which shall be added to any invoice in accordance with the applicable legislation.
- 6.2 Unless otherwise agreed in the Contract or any respective Change Order, full payment for the Scope of Supply shall be due within thirty (30) days of issue of an invoice by Supplier.
- 6.3 Payments for prices calculated on a time basis may be invoiced fortnightly, or after completion of the Scope of Supply, whichever occurs first.
- 6.4 If the Purchaser does not comply with the agreed dates of payment, Supplier shall be entitled, without explicit payment reminder to a default interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment, which shall accrue each Day at a rate of 6% per year.
- 6.5 During any period of late payment, without limiting any other rights or remedies, Supplier reserves the right to suspend performance of all its obligations and liabilities to the extent permitted by applicable law until the open and overdue invoices have been paid in full. Upon payment of invoices due, the delivery period and any other affected terms shall be adjusted accordingly. If any account remains unpaid for more than six (6) months, Supplier shall be entitled to consider the relevant

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Contract(s) as cancelled by Purchaser in accordance with Clause 13. Supplier shall be entitled to full compensation for its expenses and losses, including any legal cost and losses resulting from lower sale revenues for undelivered Scope of Supply.

6.6 If Purchaser and Supplier agreed on issuing a Letter of Credit by Purchaser in favour of Supplier, such Letter of Credit shall be irrevocable, extendable, and confirmed by a bank nominated by the Supplier; if no nomination is provided, then by a first class bank in the Supplier's country of domicile. Payments under such Letter of Credit shall be made on sight against presentation by Supplier of invoice together with the bill of lading, airway bill or warehouse receipt, whichever is applicable, or whatever documents as have been agreed upon between the Parties.

6.7 If the cost to the Supplier of performing its obligations under the Contract and/or the time for performance shall be increased after the date of Quotation by reason of enactment or amendment of any law, order, regulation or by-law having the force of law, the amount of such increase shall be added to the Contract Price and/or Delivery Date adjusted accordingly.

6.8 Purchaser shall not be entitled to set-off any due amounts, no matter whether due or acknowledged by Supplier.

### 7. Installation and Site Preparation

7.1 If Installation Services are a part of the Scope of Supply, it is the responsibility of the Purchaser to prepare the site environmentally and to provide the required services, electrical wiring and conduit, dry compressed air and piping, gas supply and piping, tools for installation, water drain, permits, including work permits, licenses, approvals, etc. as well as whatever is required to uncrate and move the equipment to its location.

7.2 Purchaser also undertakes to maintain the facilities upon which Supplier's personnel may be required to enter, in a safe condition, and to comply with all applicable laws, statutes and regulations governing workplace health and safety, and to give Supplier's personnel all instructions necessary. Supplier shall make sure that its personnel will follow all instructions reasonably made by Purchaser. The same applies vice versa in case Purchaser's personnel have to enter upon Supplier's facilities.

7.3 Purchaser's failure to comply with the obligations stated in Clauses 7.1 and 7.2 above shall entitle Supplier to either stop rendering its services, and/or postpone the delivery, and/or ask for additional charges for the lost time of its service personnel, such time to be calculated and charged in accordance with Clause 6.

### 8. Changes

8.1 The Contract can only be changed with Supplier's prior written consent. Any additional cost caused by such Change shall fully be borne by Purchaser.

8.2 Purchaser and/or Supplier may request, in writing, Changes as defined in Clause 1.3 hereof. The Supplier shall answer to such request for a Change within a reasonable time and advise Purchaser what amendments to the Contract, if any, may be necessitated by such requested Change.

8.3 The Parties shall agree on a fair and equitable adjustment of such amendments to the Contract as referred to in Clause 8.2 at their earliest convenience. In case such agreement should not be possible within fifteen (15) Days after a Change has been requested by one of the Parties, the Change shall be deemed as void and Supplier shall be entitled to continue with the delivery of the Scope of Supply without the requested Change.

### 9. Warranty

Clauses 9.1 through 9.4 contain specific warranties referring to various Scope of Supply. For the avoidance of doubt, only the warranty provision(s) referring to a specific Scope of Supply shall apply.

#### 9.1 Equipment

a) Supplier shall remedy any defect arising within twelve (12) months from the date of initial operation of the Equipment or eighteen (18) months from the date of shipment, and, if dispatches, erection, supervision of erection and/or commissioning are delayed due to reasons beyond Supplier's control, the warranty period shall end not later than eighteen (18) months after notification that the Equipment is ready for dispatch (whichever date shall occur first). This warranty shall apply to defects resulting from faulty materials or faulty workmanship.

In addition, to the extent Supplier has provided the design for the Equipment, this warranty shall also apply to defects resulting from faulty design.

b) If requested to do so by Purchaser in writing, and as Purchaser's sole and exclusive remedy, Supplier agrees to, at its sole option, either repair or replace the faulty parts of the Equipment, or supply Purchaser with non-defective Equipment or parts thereof. These remedies shall be provided for the defects notified to Supplier during the warranty period under the conditions defined in Clause 9.5 herein.

c) The warranty period for any Equipment which is repaired or replaced shall be for a period of twelve (12) months or the remainder of the original warranty period, whichever period is longer.

#### 9.2 Field Services

a) Supplier warrants that the Field Services will be performed as specified in the Contract and will comply with applicable industry standards and practices. Supplier shall remedy any defect arising within ninety (90) days from the date of completion of the Field Services and which result from faulty workmanship performed by Supplier. Defects resulting from insufficient or inappropriate documentation delivered by Purchaser shall be remedied at Purchaser's cost.

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- b) If requested to do so by Purchaser in writing, and as Purchaser's sole and exclusive remedy, Supplier shall at its sole option repair the defective Field Services or re-perform such Field Services. These remedies shall be provided for the defects notified to Supplier during the warranty period under the conditions defined in Article 9.5 herein.
- c) All Field Services which are remedied shall be warranted for a period of ninety (90) days from the date of the completion of repair or re-performance.
- d) Supplier shall bear the costs for the corresponding repair or the re-performance whether occurring at the Supplier or Purchaser or End-User facility to the extent that they are reasonable under the circumstances. Purchaser or End-User shall grant Supplier the first opportunity to remedy any defect in the Field Services. If the Purchaser or End-User has obtained the services of a third party to perform the Field Services, Supplier shall bear the costs for the corresponding repair or re-performance work provided that the Purchaser or End-User has obtained Supplier's prior written approval to use such third party.

### 9.3 Engineering Services

- a) Supplier's obligations consist of using proper care and skill in performing the work described in the Contract. Unless otherwise explicitly agreed upon in writing, Supplier shall not provide any warranty for successful achievement of the results envisaged in the Contract. Defects arising from defective Engineering Services arising within six (6) months from completion thereof shall be re-performed by Supplier at its own cost.
- b) The warranty period for any engineering services which have been re-performed under the warranty shall be for a period of six (6) months up to four (4) years after delivery of the engineering services.

### 9.4 Performance Guarantee

Unless certain requirements have explicitly been specified and accepted by Supplier in the Contract, Supplier shall not provide any performance guarantees.

### 9.5 General Conditions applicable to SULZER-CHEMTECH'S Warranty

- a) **Maximum Extension of Warranty Period**  
The warranty period for any part of the Scope of Supply which is repaired or replaced shall be for the applicable period specified under Clauses 9.1 through 9.3 or the remainder of the original warranty period, whichever period is longer. Under no circumstances shall the repaired, replaced or re-performed warranty period extend for a period of time which is greater than 50% of the original warranty period.
- b) **Inspection of Equipment and Services**  
Purchaser shall ensure that inspection of Supplier's Scope of Supply and the issuance of a written notice of Final Acceptance shall occur within seven (7) days of receiving Scope of Supply. If a written notice of Final

Acceptance is not received, then Final Acceptance will be deemed to have occurred (i) fourteen (14) days after Purchaser or End-User has received Supplier's Equipment or Engineering Services or (ii) fourteen (14) days after the completion of Supplier's Field Services.

### c) Place where Warranty Work will be executed

Supplier reserves the right to require that Purchaser or End-User return the Scope of Supply or parts thereof to Supplier's production facility to provide proper warranty service. In such cases, Supplier shall reimburse Purchaser or End-User for the reasonable costs paid for sea or land transportation of the Scope of Supply. If the return of the Scope of Supply to Supplier's production facility is not required, then Supplier shall use its best efforts to perform the warranty work at Purchaser's or End-User's facility, and as soon as reasonably practicable after receipt of written notification by the Purchaser or the End-User. Notwithstanding the foregoing, Purchaser or End-User shall make the Scope of Supply available for Supplier to repair or replace. Supplier shall not be responsible for the disassembly, removal or re-installation of the Scope of Supply.

### d) Early termination of Warranty Period

The warranty periods stipulated in Clauses 9.1 through 9.3 above shall terminate if Purchaser or a third party undertake inappropriate or improper modification or repairs, or if the Purchaser, in case of a defect, does not as soon as reasonably possible take appropriate steps to mitigate damages and to notify Supplier in writing of its obligation to remedy such defect.

### e) Exclusion from Supplier's Warranty

Excluded from Supplier's warranty and liability for defects are all deficiencies which cannot be proved to have their origin in bad material, faulty design (if applicable), or poor workmanship. Also excluded from Supplier's warranty and liability for defects are deficiencies resulting from normal wear and tear, improper maintenance, failure to observe the operating instructions provided by Supplier or deficiencies resulting from other reasons beyond Supplier's control, including damages caused by erosion or corrosion. For supplies and services of those subcontractors prescribed by the Purchaser, Supplier assumes warranty, guarantee and/or liability for defects only to the extent that such subcontractors assumed warranty, guarantee and/or liability obligations in its contract with Supplier.

### f) Dismantling and Reassembly

To the extent necessary to remedy the defect, Purchaser or End-User shall, at their own expense, arrange for any dismantling and reassembly of Equipment.

### g) No Additional Warranties or Representations

SUPPLIER MAKES NO WARRANTY OR REPRESENTATION TO THE SCOPE OF SUPPLY OTHER THAN AS SPECIFIED IN THIS SECTION. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.

### 9.6 Hazard Warning Responsibility

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Purchaser and Supplier acknowledge that each have respective obligations with respect to maintaining compliance with all safety and health related regulations concerning Scope of Supply. Purchaser is familiar with the Scope of Supply and acknowledges its separate and independent knowledge of such risks, which are known in Purchaser's industry. Purchaser shall maintain compliance with all safety and health related governmental requirements concerning Scope of Supply and shall take all reasonable and practical steps to inform, warn, and familiarize its employees, agents, contractors, and customers with all hazards associated therewith, including handling, shipment, storage, use, and disposal. Purchaser assumes as to its own employees, its independent contractors, and subsequent purchasers of the Scope of Supply sole hereunder, all responsibility for any and all necessary warnings or other precautionary measures. Purchaser shall defend at its own expense, indemnify fully and hold harmless Supplier and its parents, subsidiaries, and affiliates and its and their agents, officers, directors, employees, representatives, successors, and assigns from and against any and all liabilities, losses, damages, demands, claims, penalties, fines, actions, suits, legal, administrative or arbitration proceedings, judgments of any jurisdiction, costs and expenses (including, but not limited to, attorney's fees and related costs) arising out of or in any manner related to Purchaser's failure to provide necessary warnings or other precautionary measures in connection with the Scope of Supply sold hereunder.

**10. Limitation of Liability**

- 10.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT, INCLUDING ALL DOCUMENTS MAKING PART THEREOF AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SUPPLIER BE LIABLE TO THE PURCHASER BY WAY OF INDEMNITY, OR BY REASON OF ANY BREACH OF CONTRACT OR OF STATUTORY DUTY OR BY REASON OF TORT (INCLUDING NEGLIGENCE) UNDER ANY WARRANTY, STRICT LIABILITY OR OTHERWISE FOR ANY LOSS OF PROFIT, LOSS OF CONTRACTS OR EARNINGS (ACTUAL OR ANTICIPATED), DELAY DAMAGES, INTERRUPTION OR LOSS OF PRODUCTION, LOSS OF USE, LOSS OF OPPORTUNITY OR BUSINESS, INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER THAT MAY BE SUFFERED BY PURCHASER. PURCHASER FURTHER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS SUPPLIER FROM ANY CLAIM MADE BY END-USER OR PURCHASER'S CUSTOMERS FOR ANY SUCH LOSSES.
- 10.2 a) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE REMEDIES OF PURCHASER SET FORTH HEREIN ARE EXCLUSIVE, AND, SUBJECT ONLY TO CLAUSE 10.2 b), SUPPLIER'S LIABILITY WITH RESPECT TO ANY CONTRACT, INDEMNITY, TORT (INCLUDING NEGLIGENCE), LIABILITY UNDER ANY WARRANTY, STRICT LIABILITY OR OTHERWISE SHALL NOT IN AGGREGATE EXCEED ONE HUNDRED PERCENT (100%) OF THE CONTRACT PRICE, AND PURCHASER SHALL INDEMNIFY AND HOLD SUPPLIER HARMLESS FROM AND AGAINST ANY LIABILITY IN EXCESS OF THIS AMOUNT.

b) THE LIMITATION OF SUPPLIER'S LIABILITY AT CLAUSE 10.2 a) SHALL NOT APPLY AND NO TERM OR CONDITION OF THE CONTRACT INTENDS TO EXCLUDE OR RESTRICT THE SUPPLIER'S LEGAL LIABILITY FOR:

- PERSONAL INJURY OR DEATH ARISING FROM ITS NEGLIGENCE
- FRAUD OR FRAUDULENT MISREPRESENTATION
- CLAIMS ARISING FROM GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF THE SUPPLIER.

As used herein, "gross negligence" shall mean reckless disregard of, or wanton indifference to, harmful and avoidable consequences and "wilful misconduct" shall mean conduct that is committed with an intentional disregard for the safety of others and/or the safety of another's property. "Gross negligence" and/or "wilful misconduct" shall in particular not include any act or omission or any error of judgment or mistake made in good faith.

**11. Intellectual Property**

- 11.1 Purchaser shall provide the technical documentation (e.g. up-to-date drawings, descriptions, charts, instructions, etc.) that is necessary for the delivery of the Scope of Supply and is specified in the Contract. Purchaser confirms that Purchaser is fully authorized to use or grant permission to use the technical documentation provided to Supplier for the performance of the Scope of Supply by Supplier or its sub-suppliers, respectively. In case Purchaser would not be authorized to order said performance from Supplier without violation of intellectual property rights of third parties, Purchaser shall inform Supplier without any delay. In this case, Supplier shall stop the work until the approvals needed for the performance have been obtained. Purchaser shall indemnify and hold Supplier harmless from and against any and all such liability arising out of the use of such technical documentation. Supplier shall not use technical documentation received from Purchaser for any purpose other than to fulfil the Contract.
- 11.2 Any know-how, trademarks, inventions, patents, copyrights, Confidential Information or the like ("Intellectual Property") belonging to or provided by Supplier and used for or developed in the course of the fulfilment of the Contract by Supplier shall remain Supplier's sole and exclusive property, and no ownership rights shall be transferred to Purchaser, Purchaser's customer or End-User with respect to such Intellectual Property. However, End-User shall be granted a licence to use Supplier's Intellectual Property solely as necessary for the operation, maintenance and repair of the Scope of Supply on a non-exclusive and non-transferrable basis, which right shall not entitle the use of the Intellectual Property for the reproduction of the Scope of Supply or parts or any other work or services. Unless otherwise agreed, any royalties for such licenses shall be included in the purchase price of the Scope of Supply. If the Scope of Supply consists of Engineering Services, Purchaser shall be permitted to use, on a non-exclusive basis, the documentation received for the purpose described in the Contract. In case of doubt, Engineering Services provided for the development or construction of Equipment shall be deemed to be made available for the procurement of such Equipment or the like from Supplier solely.

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- 11.3 Supplier shall make its best endeavours to ensure that the Scope of Supply and any part thereof, in particular if designed and sold by Supplier, shall not infringe any enforceable intellectual property rights of third parties. In the event of any infringement of intellectual property rights relating to the Scope of Supply, Supplier may, in its sole discretion and as Purchaser's sole remedy, procure the right to use the Scope of Supply without impairing its suitability, or modify or replace it so that it can be used without violation of such rights. The obligations of Supplier set forth herein are contingent upon (i) Supplier receiving prompt written notice from Purchaser of such infringement (within 5 Days of Purchaser's receipt); (ii) Supplier receiving assistance from Purchaser in the defence, and (iii) the right of Supplier to settle or defend the claim.
- 11.4 The obligation of Supplier stipulated in Clause 11.3 shall not apply to (i) the Scope of Supply or part thereof which has been manufactured according to Purchaser's design, (ii) the Scope of Supply or part thereof which has been performed in reliance on Purchaser's documentation, (iii) the use of the Scope of Supply or any part thereof in conjunction with any other product or service in a combination not furnished by Supplier as part of the Scope of Supply, (iv) any additions or modifications to the Scope of Supply without the written authorization of the Supplier, (v) use of the Scope of Supply outside of Supplier's published standards or specifications, or (vi) products fabricated by using the Scope of Supply. Referring to any such equipment, service, product, part or use in such combination, Supplier assumes no liability whatsoever for infringement of any intellectual property rights of third parties and Purchaser shall indemnify and hold Supplier harmless against any respective infringement claims. Supplier shall co-operate with Purchaser in the same manner as required by Supplier under Clauses 11.3 (i) to (iii) herein above.
- 11.5 Any Party's copyrighted material shall not be copied by the other Party except for archiving purposes or to replace a defective copy.
- 11.6 Free Issue Materials  
Materials supplied by Purchaser to Supplier (e.g. samples to be processed or tested, product for usage in performance tests, materials to be used for implementation in the Scope of Supply, etc.) shall at all times remain the property of Purchaser and shall be sufficiently covered under Purchaser's property insurance policy. Subject to Clauses 6 and 7 hereinabove, Supplier shall be solely liable for damages caused by gross negligence or wilful misconduct to free issue materials.
- 12. Termination for Cause**
- 12.1 Purchaser shall have the right to terminate the Contract (or any portion thereof) for cause in the event that Supplier:
- becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; or
  - substantially breaches and fails to comply with or perform its material obligations hereunder (but only with respect to a material obligation for which the Contract does not provide exclusive remedies),
- provided that Purchaser shall first have provided Supplier with written notice of the nature of such breach and a grace period of at least 21 days or an adequate extended period after receipt of such notification to remedy the breach including the intention to terminate the Contract and Supplier will have failed to either (i) commence to cure such breach and diligently thereafter to pursue such cure, or (ii) provide reasonable evidence that no such breach has occurred.
- 12.2 If Purchaser terminates the Contract under Clause 12.1 hereof, or any portion thereof, as provided in this Clause 12, Purchaser shall pay to Supplier that portion of the Contract price allocable to the Scope of Supply completed, or if this is not possible to ascertain, all costs and expenses of the Supplier accrued up to then. The amount of such compensation shall be based on Supplier's cost related to the partial Scope of Supply and the value said partial Scope of Supply has for the Purchaser on a fair and true basis. In case Purchaser does not accept any part of the Scope of Supply, Purchaser shall, at Purchaser's costs, return any tangible and intangible goods already delivered back to Supplier, and Supplier shall reimburse the purchase price for the returned Scope of Supply. Save in respect of such refund, and as far as legally possible, Supplier is not obliged to compensate any further cost or losses.
- 12.3 Supplier shall have the right to terminate the Contract (or any portion thereof) for cause in the event that Purchaser:
- has any proceedings commenced against it under any law, regulation or procedure relating to the reconstruction or adjustment of its debts, or any moratorium is obtained in respect of Purchaser; or
  - becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; or
  - fails to comply with any material terms of the Contract, including failure to make any payment when due or to fulfil any payment conditions; or
  - does not provide any Letter of Credit, or other payment guarantee on request of Supplier in case of possible payment difficulties or a bad credit rating.
- 12.4 If Supplier terminates the Contract, or any portions thereof under Clause 12.3 hereof, Supplier shall be paid for all Scope of Supply completed or partially completed prior to the date of termination, plus extra costs and other damages incurred by the termination, including any cancellation costs resulting from premature termination of its subcontracts and/or expenses for non-cancellable procurements.
- 13. Termination for Convenience**
- 13.1 Purchaser shall have the right to terminate the Contract in whole or in part for convenience upon not less than fifteen (15) Days' prior written notice to Supplier, and Supplier shall stop its performance except as otherwise agreed with Purchaser. In case of termination pursuant to this Clause 13, termination shall be conditional upon Purchaser paying Supplier the termination fee.

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13.2 The termination fee shall be calculated by reference to the Supplier's cancellation schedule if included as part of the Contract, otherwise the termination fee shall be the Contract Price less the Supplier's net saving of cost arising from such termination, provided that the termination fee shall be not less than 25% of the Contract Price representing a genuine pre-estimate of Supplier's minimum costs and losses as a result of termination.

## 14. Suspension

14.1 For plausible reasons, Purchaser may suspend the Contract by written notice to Supplier provided that Supplier shall be entitled to be compensated for all additional costs and expenses caused by the suspension including costs of demobilization, storage, the extension, renewal or replacement of any bank guarantee or other performance security and loss of preferential customs or tax treatment. If any suspension lasts for thirty (30) Days or more, notwithstanding any agreed payment milestones, Supplier shall be entitled to be paid for all Scope of Supply performed up to the date of suspension, and if the suspension lasts for sixty (60) Days or more, Supplier shall be entitled to treat the Contract as having been terminated by Purchaser in accordance with Clause 13.1.

14.2 Notwithstanding any additional rights or remedies under the Contract or at law, Supplier shall be entitled to suspend the Contract immediately without notice if (i) any of the events in Clause 12.3. apply (ii) Clause 6.4 applies or (iii) Purchaser (in Supplier's reasonable opinion) fails to provide a safe working environment.

14.3 In case of suspension according to Clause 14.1 or 14.2, Supplier shall only resume work as soon as the required Supplier capacity is available and upon agreement of a written instruction from Purchaser, receipt of payments due and owing by Purchaser under the Contract and a fully signed Change Order which shall include an equitable adjustment of the delivery schedule and any other Changes resulting from the suspension.

## 15. Confidentiality

15.1 In connection with the Contract, Supplier and Purchaser (as to information disclosed, the Disclosing Party) may each provide the other Party (as to information received, the Receiving Party) with Confidential Information. Confidential Information shall not include information which (i) is or becomes generally and legally available to the public other than as a result of disclosure by the Receiving Party, its representatives or its affiliates, or (ii) is or becomes legally available to the Receiving Party or its representatives or affiliates on a non-confidential basis from a source other than the Disclosing Party when such source is not, to the best of the Receiving Party's knowledge, subject to a confidentiality obligation to the Disclosing Party, or (iii) has been or is subsequently independently and legally developed by the Receiving Party, its representatives or affiliates, without reference to the Confidential Information, or (iv) is required to be disclosed by order of a competent court or government agency.

16.2 The Receiving Party agrees, except as otherwise required by law, (i) to use the Confidential Information only in connection with the performance of the Contract or installation, operation, maintenance and use of the Scope of Supply sold hereunder and to not, at any time

disclose, distribute, publish, copy, reproduce, sell, lend, manipulate, or otherwise make use of or permit use to be made of any confidential information, except with the Disclosing Party's prior written consent, and (ii) to take reasonable measures to prevent disclosure of the Confidential Information, except to its employees for the purpose of performance of the Contract, or installation, operation, maintenance or use of the Scope of Supply sold hereunder. Further, if disclosure of Confidential Information to a third party is required, the Receiving Party agrees to use its best efforts to limit such disclosure to the maximum extent possible and require proprietary or confidential treatment of the Confidential Information by such third party. If not prohibited by applicable law, Receiving Party shall endeavour to provide notice to the Disclosing Party when Disclosing Party's Confidential Information is requested in discovery or by subpoena so that Disclosing Party may attempt to protect the confidentiality of the information.

## 16. Export Control

16.1 Both Parties shall comply with all Applicable Export Laws.

16.2 Purchaser expressly acknowledges and agrees that it will NOT:

- a. divert, use, export or re-export any Export Items contrary to any Applicable Export Laws; and/or
- b. export, re-export, or provide any Export Items to any entity or person within any country that is subject to any Sanctions; and/or
- c. export, re-export, or provide any Export Item to entities and persons that are ineligible under Applicable Export Laws; and/or
- d. use or permit any third party to use the Scope of Work in connection with the design, production, use, or storage of chemical, biological or nuclear weapons or missiles of any kind; and/or
- e. have any recourse against Supplier in the event of any changes to Applicable Export Laws which impact the Scope of Supply.

## 16.3 Export License

If an export license is required upon receipt of the Purchase Order, Supplier shall prepare an application on Purchaser's behalf and submit it to the appropriate authorities. Referring to any export license, Purchaser shall advise Supplier of the validity, number, date of issue and expiration date. Supplier's performance hereunder shall be subject to Supplier's prior receipt of evidence satisfactory to Supplier that an appropriate export license has been granted. Purchaser assumes all responsibility for reimbursing Supplier for all expenses incurred by Supplier with respect to any export license.

If requested, the Purchaser shall provide prior to shipment, an end use certificate in the format requested by the Supplier.

## 17 Insurance

17.1 Supplier shall effect and/or maintain the following insurance:

- a. General and products liability insurance covering its legal liability for bodily injury and damage to third



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party physical property (including Purchaser's property other than the Scope of Supply) arising out of performance of this Contract. The limit of insurance shall be up to one million Euros (EUR 1,000,000) or the equivalent in any other currency per occurrence and up to two million Euros (EUR 2,000,000) in the aggregate per year.

- b. Transport insurance in accordance with any agreed trade term, which shall be construed in accordance with the Incoterms.
- c. For all its employees engaged in performing this Contract occupational accident and disease insurance (i.e. workers compensation or similar social insurance) in accordance with the laws which may apply to those employees.
- d. Automobile liability insurance in accordance with local laws or custom to the extent that Supplier's employees use owned, non-owned or rented automobiles whilst performing Services at Purchaser's site.

17.2 Whenever required by Purchaser and procurable from the respective insurance carrier/broker, Supplier shall furnish confirmation of any insurance, which Supplier is required to effect and/or maintain under this Contract, provided that such policies shall not be primary with respect to Purchaser's, its customer's or End User's insurance policies and shall not grant waiver of subrogation to Purchaser, its customer or End User or name such parties as additional insured or co-insured party.

## 18 Compliance, Integrity, Social Responsibility, Environment, Data Protection

### 18.1 Compliance with laws

Both Parties represent and warrant that they are and will remain in full compliance with all applicable laws.

### 18.2 Anti-Bribery, Anti-Corruption and Tax Evasion

Both Parties shall, in performing their respective obligations under the Contract:

- a. comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, in particular with the UK Bribery Act 2010 and US Foreign Corrupt Practices Act 1977; and
- b. not engage in, or cause, any act or omission which would constitute any kind of tax evasion facilitation offence in any country ("**Relevant Requirements**");
- c. not engage in any activity, practice or conduct which would constitute an offence under the Relevant Requirements; and
- d. have and shall maintain in place throughout the term of the Contract their own policies and procedures to ensure compliance with the Relevant Requirements and will enforce them where appropriate.

### 18.3 Anti-Trust and Competition

Both Parties shall respect all relevant antitrust laws. They shall not tolerate any bid rigging, price fixing or any abuse of a dominant market position.

### 18.4 Labour Rights, Anti-Slavery and Human Trafficking

Both Parties shall, in performing their respective obligations under the Contract, comply with all labour rights as set forth in the standards of the International Labour Organization (ILO) and other applicable UN conventions dealing with human rights, as well as applicable local laws and regulations, including the Modern Slavery Act 2015. In particular, both Parties shall refrain from any child labour as well as human trafficking and slavery practices.

### 18.5 Material Compliance

Both Parties shall comply with regulatory and customer requirements regarding the prohibition and restriction of conflict materials, in particular with the Dodd-Frank Wall Street Reform and Consumer Protection Act regarding "Conflict Minerals" as defined in Section 1502 as well as with any other applicable regulations on conflict minerals.

### 18.6 Data Protection

- a. Both Parties shall, in performing their respective obligations under the Contract, comply with all applicable data protection laws and regulations in the context with their respective processing of Personal Data, in particular with the requirements of the European General Data Protection Regulation (Regulation EU 2016/679 / GDPR) or any other local law which may amend or supersede the same, if applicable.
- b. Both Parties are entitled to disclose, collect, use and store Personal Data of the other Party ("Data Controller") in order to perform the Contract. Sensitive data, such as, but not limited to health data, need to be treated particularly carefully. Whenever necessary, the Data Controller shall additionally obtain the consent of the affected individuals to such processing of his or her personal data for the following specific purposes: (i) performing the Contract; (ii) transferring personal data to countries within and outside the European Free Trade Association (EFTA), and (iii) satisfying any legal or regulatory requirements.
- c. Both Parties are obliged to use personal data of the other Party and its employees only for the purposes mentioned herein and to protect them as far as technically feasible from any unauthorized access.

## 19. Applicable Law / Dispute Resolution

### 20.1 Applicable Law

The applicable law shall be the law of P. R. China, excluding and without application of any conflict of law rules. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG / Vienna 1980) is expressly excluded.

### 20.2 Mediation

The Parties shall endeavour to settle any dispute or difference between them in connection with, or arising out of, the Contract by mutual agreement. If the Parties fail to reach such agreement within thirty (30) Days (or such longer period as the Parties may agree in writing) from one of the Parties' written notice informing the other Party of the dispute and its will to settle the dispute by mutual agreement, then the dispute or difference shall be referred to a mediator for resolution. The Parties

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shall attempt to agree upon the appointment of a mediator, upon receipt, by either of them, of a written notice to concur in such appointment. Should the Parties fail to agree within fourteen (14) Days, or fail to agree with the outcome of mediation, either Party, upon giving written notice, may take legal action. Neither Party shall proceed with litigation until the Parties have mediated the dispute under this Clause 20.2. Nothing in this clause prevents either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party.

### 20.3 Place of Jurisdiction

In case of a dispute, the Parties shall make their best endeavours to solve such dispute amicably. If this should not be possible, the following shall apply:

- a. For all disputes between Purchasers located in the People's Republic of China and Supplier, the courts at the place of Supplier shall have exclusive jurisdiction. Disputes shall be settled in accordance with the provision of the Contract and the documents pertaining thereto.
- b. All disputes between Purchasers located outside the People's Republic of China and Supplier, which arise from or in connection with the Contract, shall be submitted to China International Economic and Trade Arbitration Commission for arbitration, which shall be conducted in accordance with the Commission's arbitration rules in effect at the time of applying for arbitration. Disputes shall be settled in accordance with the provision of the Contract and the documents pertaining thereto. The arbitral award is final and binding upon both parties. Place of arbitration shall be Shanghai. The arbitration shall be held in the Chinese language.

## 20. Miscellaneous

### 20.1 Assignment

Any attempt by a Party to assign, transfer, or delegate any of the rights, duties or obligations herein to a third party, other than Supplier's right to payment in accordance with the terms of the Contract, without prior written

consent of the other Party shall render such attempted assignment or transfer null and void. Supplier's Affiliated Companies shall not be considered as third parties. However, this restriction shall not apply if Supplier, in the course of its usual business practices, requires part of its work to be undertaken or supplied by sub-contractors or sub-suppliers.

### 20.2 Waiver of Rights

Supplier's failure to exercise any of its rights shall not constitute or be deemed a waiver or a forfeiture of such rights.

### 20.3 Severability

If a provision of the Contract is determined to be void or unenforceable, this finding shall not render other provision void or unenforceable, and Supplier and Purchaser shall make their best endeavours to replace such provision by a valid one covering the original commercial intention as far as legally possible.

### 20.4 Interpretation

No term in the Contract shall be construed against any Party to this Contract because that Party drafted that term or requested that it be included in the Contract.

### 20.5 Exclusion of Third-Party Rights

The Parties to this Contract do not intend that any term of this Contract should be enforced by any person who is not a party to this Contract.

### 20.6 Survival

Those provisions that by their nature are intended to survive termination or expiration of this Contract shall so survive.