

**TERMS & CONDITIONS****GENERAL TERMS AND CONDITIONS OF SUPPLY****Ensival Moret Belgium SA****(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"** 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 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, 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) any documents expressly incorporated by reference by a Change Order and (iv) 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).
- 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 when the Purchase Order has been accepted by the Supplier in writing, or, if the Contract documents are signed by both Parties, the date of the latest signing.
- 1.12 **"End-User"** means the ultimate user and/or the ultimate owner of the Scope of Supply.
- 1.13 **"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.
- 1.14 **"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; 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.
- 1.15 **"Goods"** means any products, furnishings, equipment and any other tangible items provided by the Supplier
- 1.15 **"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.
- 1.16 **"Letter of Credit"** means the document referred to in Clause 6.5.
- 1.17 **"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 guarantees. Such expressly stated amount is agreed by the Parties to be

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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 Supplier's sole liability.

- 1.18 **"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.
- 1.19 **"Party"** or **"Parties"** means Purchaser or Supplier or Purchaser and Supplier.
- 1.20 **"Personal Data"** means any information which are related to an identified or identifiable natural person.
- 1.21 **"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.
- 1.22 **"Purchaser"** means the Party defined as the Purchaser in the Purchase Order, or, if such definition is missing, the Party issuing the Purchase Order.
- 1.23 **"Quotation"** means Supplier's written proposal for the delivery of the Scope of Supply.
- 1.24 **"Receiving Party"** means the Party receiving Confidential Information of the Disclosing Party.
- 1.25 **"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.
- 1.26 **"Scope of Supply"** means the agreed Goods and/or Services to be delivered or performed under the Contract as set out in the Contract.
- 1.27 **"Services"** means provision of services such as erection and commissioning as well as repair and maintenance work.
- 1.28 **"Supplier"** means the Sulzer company which accepted the Purchase Order.
- 1.29 **"Terms and Conditions"** means these Sulzer General Terms and Conditions of Supply.
- 1.30 **"Warranty Period"** means the time period stipulated in Clause 9.2 hereof.
- 1.31 **"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 said documents within the Contract, the following order of priority shall apply:
  - a. Contract
  - b. 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
  - c. Supplier's Quotation and all documents incorporated therein by reference
  - d. These Terms and Conditions including Attachment 1 hereto. If Services are required to be performed by Supplier, Attachment 1 shall be considered as integral part of the Contract if attached hereto
  - e. Purchaser's 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:
    - 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 submittals 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 fulfil 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

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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 for costs of extra transportation, storage, insurance and/or administration fees incurred as a result of any delay resulting from reasons not attributable to Supplier, including late payment.

3.6 In the event Supplier fails to meet the Delivery Date for more than fourteen (14) Days (grace period) due to reasons for which Supplier or its sub-suppliers are directly responsible for and provided that the Contract contains Liquidated Damages, Purchaser shall be entitled to require Supplier to pay Liquidated Damages at the rate stated in 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 14.2.

#### 5. Transfer of Title and Risk

5.1 Unless otherwise required by applicable law, the title to any 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 Purchaser'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 13.3(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, Purchase Order 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 or Purchase Order. 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,

- a) Payments are due and shall be paid within thirty (30) Days from the date of the Supplier's invoice,
- b) Supplier may, at its sole discretion, issue invoices for progress payments as follows: For one third (1/3) of the Contract Price within five (5) Days of the Effective Date, for one third (1/3) following expiration of half of the quoted lead time, and for one third (1/3) within forty-five (45) Days from the scheduled Delivery Date; and
- c) Payments for prices calculated on a time basis may be invoiced fortnightly, or after completion of the Scope of Supply, whichever occurs first.

6.3 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

6.4 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 Purchase Order(s) as cancelled by Purchaser in accordance with Clause 14. 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.

6.5 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.

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6.6 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.

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

## 7. Inspection, Acceptance

7.1 The Goods shall be subject to Purchaser's final inspection upon receipt at the delivery site. Claims for damage, shortage, errors in shipping or rejection of such Goods, or portion thereof, must be made by Purchaser in writing within seven (7) Days following the date of delivery at the delivery site in accordance with Clause 3.4 unless otherwise agreed in the Purchase Order or provided by mandatory applicable law. If claims are not raised within this notice period, they shall be considered waived and such Goods are deemed to be irrevocably accepted by Purchaser. Purchaser's sole remedy for such claims is repair or replacement of such Goods by Supplier.

7.2 Services shall be accepted or rejected upon completion of such Services. However, acceptance for provided Services cannot be withheld without reason or for minor deficiencies only.

7.3 Unless otherwise agreed in the Purchase Order, costs related to inspections or tests of the Goods shall be borne by the Purchaser.

## 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

9.1 Supplier warrants that the Scope of Supply:

- a. will be of the kind and quality as described in the Contract, and
- b. will be free of material defects in workmanship and material, and
- c. will, to the extent required for its functioning, be free from defects in design. However, Supplier shall not

be held responsible for the design of the Scope of Supply (including the selection of the materials) if the design and/or the selection of the materials has been chosen or provided by Purchaser, End-User, or a third party not being a sub-supplier appointed by Supplier.

9.2 Except in cases where the Scope of Supply is limited to Services only, the Warranty Period shall end on the earlier of the below dates:

- a. twelve (12) months from the initial operation of the relevant part of the Scope of Supply, or
- b. eighteen (18) months from the date Supplier made the relevant part of the Scope of Supply available for delivery.

Where the Scope of Supply is limited to Services only, the Warranty Period shall commence on completion of such Services and shall terminate one-hundred-and-eighty (180) Days thereafter.

9.3 If, during the Warranty Period, the Scope of Supply fails to meet the requirements as set out in Clause 9.1, then Purchaser shall give immediately written notification to Supplier stating the reasons for it. Within seven (7) Days (or such longer period that is reasonable under the circumstances) of receipt of Purchaser's notification, Supplier shall commence the investigation, and, in case of a warranty case as described in Clause 9.1, start repairing or, at Supplier's own discretion, undertake the modification or replacement of the defective part. Purchaser shall make the Scope of Supply, or the defective part thereof, available for correction at a convenient onshore location and in a non-hazardous condition and environment. Subject to the Limitation of Liability, Supplier shall be liable for Supplier's own costs incurred as a result of such action only. In no event shall Supplier be responsible for the cost of providing access to the Scope of Supply, offshore transportation or costs of disassembly, removal or re-installation of any items.

9.4 In the event that Supplier undertakes any repair or replacement of any part of the Scope of Supply in accordance with its obligations under Clause 9.3, such repaired or replaced part shall be warranted in accordance with Clause 9.1 for a period of six (6) months from the date of completion thereof or until the end of the Warranty Period established in Clause 9.2, whichever expires later. Such extended warranty period shall under no circumstances exceed a period of six (6) months after the end of the original Warranty Period.

9.5 The warranties contained herein shall not apply if the faults or defects referred to herein cannot be proven to be a result of Supplier's failure under this Clause 9. Such exclusions from warranty shall in particular include the incorrect usage; faulty installation or start-up; failure to observe operating instructions; failure to carry out proper maintenance, modifications or repairs; or incorrect or negligent handling by Purchaser, End-User or third parties other than Supplier; normal wear and tear; erosion or corrosion; improper storage, unsuitable service products or replacement materials; unsuitable foundations; conditions more severe than those specified; or deficiencies resulting from other reasons beyond Supplier's control. The Supplier's warranty obligations shall also cease to apply if Purchaser, End-User or other third parties, in case of a defect, does not immediately take all appropriate steps to mitigate damages and notify Supplier as stated herein.



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9.6 Correction of nonconformities in the manner and for the period of time provided within this Clause 9 shall constitute fulfilment of all liabilities of Supplier to Purchaser (which liabilities shall be subject to the limitations of liability contained elsewhere in the Contract, including Clause 11), whether based on contract, negligence or otherwise, with respect to Scope of Supply. Supplier makes no other warranty, guarantee or representation in respect of the Scope of Supply other than as specified in this Clause 9. ALL OTHER WARRANTIES, CONDITIONS, AND REPRESENTATIONS, EXPRESSED OR IMPLIED BY STATUTE, COMMON LAW OR OTHERWISE, IN RELATION TO THE SUPPLY OF THE SCOPE OF SUPPLY, (INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE) ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

## 10. Performance Guarantee

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

10.2 If a performance guarantee has been agreed upon, it shall be fulfilled if the agreed criteria are achieved in a performance test executed in the Supplier's or its sub-supplier's factory. Unless otherwise agreed, Performance site tests shall be excluded.

## 11. Limitation of Liability

11.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT, 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, OR FOR ANY 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.

11.2 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 11.2 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 11.2 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.

## 12. Intellectual Property

12.1 Purchaser confirms and warrants 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.

12.2 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 said 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.

12.3 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, 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

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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.

12.4 The obligation of Supplier stipulated in Clause 12.3 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 Clause 12.3 (i) to (iii) herein above.

12.5 Any Party's copyrighted material shall not be copied by the other Party except for archiving purposes or to replace a defective copy.

### 13. Termination for Cause

13.1 Purchaser shall have the right to terminate the Contract (or any portion thereof) for cause in the event that Supplier:

- a. 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
- b. 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.

13.2 If Purchaser terminates the Contract under Clause 13.1 hereof, or any portion thereof, as provided in this Clause 13, 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.

13.3 Supplier shall have the right to terminate the Contract (or any portion thereof) immediately for cause in the event that Purchaser:

- a. 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
- b. 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
- c. 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
- d. 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.

13.4 If Supplier terminates the Contract, or any portions thereof under Clause 13.3 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.

### 14. Termination for Convenience

14.1 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 14, termination shall be conditional upon Purchaser paying Supplier the termination fee.

14.2 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 10% of the Contract Price representing a reasonable pre-estimate of Supplier's minimum loss as a result of termination.

### 15. Suspension

15.1 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

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having been terminated by Purchaser in accordance with Clause 14.1.

15.2 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 13.3. apply (ii) Clause 6.4 applies or (iii) Purchaser (in Supplier's reasonable opinion) fails to provide a safe working environment.

15.3 In case of suspension according to Clause 15.1 or 15.2, 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.

**16. Confidentiality**

16.1 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.

**17. Export Control**

17.1 Both Parties shall comply with all Applicable Export Laws.

17.2 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.

**17.3 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.

**18. Insurance**

18.1. 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 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 one million Euros (EUR 1,000,000) or the equivalent in any other currency per occurrence and 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.

18.2 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

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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.

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

### 19.1 Compliance with laws

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

### 19.2 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.

### 19.3 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.

### 19.4 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.

### 19.5 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.

### 19.7 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 process 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.

## 20. Applicable Law / Dispute Resolution

### 20.1 Applicable Law

The Contract shall be governed by the laws of Belgium, excluding the conflict of law rules and any conflict of laws principle that would refer to the laws of another jurisdiction.

### 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 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. 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

Any dispute, controversy, or claim arising out of, or in relation to, this Contract, including regarding the validity, invalidity, breach, or termination thereof, shall be resolved by the ordinary courts of Thimister, Belgium, or at the Supplier's choice, by the ordinary courts at the domicile of the Purchaser, with the Parties agreeing that the courts of such jurisdiction shall have exclusive jurisdiction to settle any dispute (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

## 21. Miscellaneous

### 21.1 Assignment

Any attempt by a Party to assign, transfer, or delegate any of the rights, duties or obligations herein to a third



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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.

### 21.2 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.

### 21.3 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.

### 21.4 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.

### 21.5 Survival

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

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## ATTACHMENT 1 to SULZER PUMPS GENERAL TERMS AND CONDITIONS OF SUPPLY

### Additional Terms and Conditions for Contracts including Services

#### A1. Parties' Representatives

A1.1 Purchaser and Supplier shall each appoint a person to act as its representative for the purposes of the Services and shall each notify the other in writing of such appointment prior to Supplier's personnel arrival at site. ("Site" means the place where the Services have to be performed.) Such person shall have full authority to act on behalf of the Purchaser or the Supplier respectively for the purposes of the Services.

A1.2 For the purposes of this Contract, Supplier's representative and other personnel shall be deemed to be agents of Supplier and nothing herein shall establish the relationship of master and servant as between the Purchaser and the Supplier's representative and other personnel.

#### A2. Labour Provided by Purchaser

A2.1 If required by the Contract or subsequently agreed between the Parties, Purchaser shall provide, at its own expense, skilled and sufficient personnel to undertake the relevant identified work. Such labour shall include at least one foreman who is fluent in the English language.

A2.2 Purchaser shall procure and maintain suitable Worker's and Employer's Liability Insurance as required by the applicable law for any labour provided by them under the Contract.

A2.3 The personnel provided by the Purchaser or End-User shall remain under the control of the Purchaser or End-User, as the case may be. However, such personnel shall obey to the orders and instructions of the Supplier's representative. The Supplier shall not be liable for any act, omission or negligence of such personnel, except to the extent that such act or omission is a direct result of the proven negligence of the Supplier's representative (subject always to the limitations contained in Clause 11 of the Terms and Conditions).

#### A3. Facilities Provided by Purchaser

A3.1 The Purchaser shall provide the following facilities and services at its own expense.

A3.1.1 Adequately furnished and equipped living accommodation to European standards for use by the Supplier's personnel throughout their stay at the Site together with subsistence and other reasonable expenses of the Supplier's personnel.

A3.1.2 Transportation for the Supplier's personnel between the Site and place of arrival and departure and for transportation between accommodation and the Site.

A3.1.3 Any special clothing or personal protective equipment for the Supplier's personnel that may be required for the applicable Site or work conditions.

A3.1.4 Except as otherwise stated in the Contract, all tools and equipment required to perform the Services, including, but not limited to, hand-tools, any special tools, heavy tools, lifting equipment, craneage, scaffolding, lighting and welding sets. All such tools and equipment shall be maintained in a safe and suitable condition by the Purchaser and, where applicable, be fully tested.

A3.1.5 All Site security, protection and watching together with implementing the correct operating and maintenance of all safety systems, procedures and equipment.

A3.1.6 All suitable consumables required for the Services, including heating, gas, fuel, compressed air, electricity, lubrication materials and other sundry items.

A3.1.7 Suitable lockable storage, security and protection for all materials and equipment.

A3.1.8 Arrangement for the provision of letters of invitation to enable Supplier to arrange necessary visas.

A3.1.9 Permits, including work permits, licenses and approvals.

A3.2 The Purchaser shall be responsible for any loss or damage to tools, plant, equipment, materials and consumable stored or placed upon the Site and shall procure and maintain suitable insurance policy to cover all risks.

A3.3 Purchaser also undertakes to maintain the Site and 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.

A3.4 Purchaser's failure to comply with the obligations stated in Clauses A3.1, A3.2, and A3.3 above shall entitle Supplier to either stop rendering the Services, and/or postpone the delivery and/or ask for additional charges for the lost time of its service personnel.

#### A4. Working Hours

A4.1 The applicable working hours shall be as stated in the Contract.

A4.2 After a period of not more than sixty (60) days, or such other period as stated in the Contract, of attendance by any of the Supplier's personnel at Site and in addition at

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the Christmas/New Year period, the Supplier's personnel are entitled to a return visit to their country of residence. The reasonable cost of the journey from and to Site shall be paid by the Purchaser to the Supplier.

#### A5. Time Sheets

A5.1 At the end of each week and unless otherwise agreed, the Supplier's personnel shall submit time sheets to the Purchaser's representative, showing all hours worked, to whom they are chargeable and any other items that are reimbursable by the Purchaser. Any objections against the time sheet shall be raised within forty-eight (48) hours of receipt, otherwise the time sheets will be deemed accepted by Purchaser and binding on Purchaser for purposes of payments that are due to Supplier.

#### A6. Accidents, Sickness and Medical Facilities

A6.1 In cases of sickness or accidents to any of Supplier's personnel, Purchaser shall provide, at his own cost, suitable qualified medical and dental care including medicines. Any treatment requiring hospitalization shall be given in a private ward.

#### A7. Areas of High Risk

A7.1 In the event that, due to the location of the Site, the Supplier is unable to obtain insurance cover in respect of Employers Liability, Personal Accident and/or travel under the Supplier's present policy for the Supplier's personnel, the Purchaser shall pay any additional required premiums that the Supplier may incur to provide such special insurances. However, should it not be possible for the Supplier to obtain such suitable insurance cover or existing cover is withdrawn during the course of the Services, the Supplier is hereby relieved of its obligations under the Contract and in this event Supplier shall not be in breach of any obligations hereunder and Purchaser shall have no right of claim against Supplier either under the Contract or against any Letter of Credit, bank guarantee or surety given by Supplier.

#### A8. Warranty for Services

8.1 Supplier warrants that the Scope of Supply will be performed in a good and workmanlike manner and will be as described in the Contract for twelve (12) months after completion of the Services, or eighteen (18) months from shipment, whichever occur first ("Warranty Period"). If within the Warranty Period any Services fails to conform to this warranty, in complete fulfilment of all its liabilities under this warranty and provided that Purchaser gives Supplier prompt written notice of such failure, Supplier shall, at Supplier's option, rework, repair, or replace the defective Services.

8.2 No Services shall be deemed to have failed to meet Supplier's warranty or to be in any way defective by reason of normal wear and tear, failure to resist erosive or corrosive action of any fluid or gas, Purchaser's failure to properly store, install, operate or maintain the equipment or material up-on which Services were performed in accordance with good industry practices or specific recommendations of Supplier, or Purchaser's failure to

provide complete and accurate information to Supplier concerning the operational application of the Services.

8.3 Purchaser shall make the replacement part(s) available for correction. The warranty contained in this Clause A8 will terminate immediately, if Purchaser or a third party undertakes inappropriate or improper modifications or repairs or if Purchaser, in case of a defect, does not immediately notify Supplier in writing of its obligations to remedy such defect and promptly take all appropriate steps to mitigate damages. Correction of non-conformities in the manner and for the period of time provided in this Clause A8 shall constitute fulfilment of all liabilities of Supplier to Purchaser with respect to such Services and equipment.

8.4 Supplier shall not be liable for costs of removal, reinstallation, or gaining access unless installation of the defective part or parts was an element of the Services. The re-performance, repair, or replacement of the Services or spare or replacement parts by and at Supplier's option under the provisions of this Clause A8 shall constitute Supplier's sole obligation and Purchaser's sole and exclusive remedy for all claims of defects regarding the Services.

8.5 Supplier shall not be liable for any loss or damage from its failure to discover or repair latent defects or inherent defects in Purchaser's equipment design nor shall Supplier be liable for any warranty obligation for Purchaser-provided parts, regardless of installation of such parts by Supplier.

8.6 For the parts of the Services that have been replaced or repaired under this warranty, the Warranty Period will commence again and be for a period not to exceed six (6) months after completion of the rework, repair, or replacement, as applicable, or the end of the original Warranty Period, whichever is later, and no any case shall the Warranty Period extend longer than eighteen (18) months after the start of the original Warranty Period.

8.7 ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, ARE HEREBY DISCLAIMED. SUPPLIER MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND WITH RESPECT TO THE SCOPE OF SUPPLY OTHER THAN AS SPECIFIED IN THIS CLAUSE A8.