

Terms and Conditions

General Terms and Conditions of Supply Sulzer Pumps (US) Inc.

1. Definitions

- 1.1 "Applicable Export Laws" means any 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.
- 1.2 "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 or omissions to the Scope of Supply.
- 1.3 "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 document rules the modification of the Contract with respect to the Contract Price, specifications, shipment schedule, warranty, delivery time, etc.
- 1.4 "Confidential Information" means proprietary or confidential data including pricing, terms, documents, specifications, plans or drawings that are not generally known to the public.
- 1.5 "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 within Supplier's Quotation, (iii) any documents related to a Change Order and (iv) the Purchase Order to the extent approved in writing by Supplier.
- 1.6 "Contract Price" means the total sum indicated in the Purchase Order 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 hourly rates specified in the Purchase Order.
- 1.7 "Day(s)" means calendar day(s) unless the term "working day(s)" is used.
- 1.8 "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.
- 1.9 "Disclosing Party" means the Party disclosing Confidential Information to the other Party.
- 1.10 "Effective Date" means the date when the Purchase Order has been accepted by the Supplier in writing or, in case the Contract documents are signed by both Parties, the date of the latest signing.
- 1.11 "End-User" means the ultimate user and/or the ultimate owner of the Scope of Supply.
- 1.12 "Export Item" means any goods or services, including but not limited to, commodities, software or technology provided by Supplier that is required to be exported or re-exported under the Contract.
- 1.13 "Incoterms" means the version in force on the Effective Date of the document published under the name "Incoterms" by the International Chamber of Commerce.

- 1.14 "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 dates or performance guarantees. Such expressly stated amount is agreed by the Parties to be a pre-estimate of such damages and is not to be considered a penalty.
- 1.15 "Party" means Purchaser or Supplier; "Parties" means Purchaser and Supplier.
- 1.16 "Purchase Order" means the order documents issued by Purchaser for the order of the Scope of Supply in the version confirmed by Supplier in writing.
- 1.17 "Purchaser" means the Party defined as the Purchaser in the Purchase Order or, if such definition is missing, the Party issuing the Purchase Order.
- 1.18 "Quotation" means Supplier's written proposal for the delivery of the Scope of Supply.
- 1.19 "Receiving Party" means the Party receiving Confidential Information of the other Party.
- 1.20 "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.
- 1.21 "Scope of Supply" means the Goods and/or Services to be delivered or performed under the Contract
- 1.22 "Services" means site services such as erection and commissioning, repairs and maintenance work.
- 1.23 "Supplier" means the Sulzer Pumps company which accepted the Purchase Order.
- 1.24 "Terms and Conditions" means these Sulzer Pumps General Terms and Conditions of Supply.
- 1.25 "Warranty Period" means the time period stipulated in Clause 9.2 hereof.

2. General

- 2.1 The Contract supersedes all previous negotiations, representations and/or contractual commitments between the Parties. Supplier hereby gives notice of its objection to and rejection of any different or additional terms, and Purchaser agrees that the terms contained in the Contract shall apply and govern to the exclusion of all others. The Parties agree that the Terms and Conditions shall be construed as if jointly drafted by the Parties and no presumption or burden of proof will arise favoring or disfavoring either Party by virtue of authorship of any of the provision of these Terms and Conditions.

An offer by Supplier in its Quotation that does not stipulate an 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 acknowledgment 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. Documents related to Change Orders mutually agreed upon by both Parties, latest date priority, and to be clearly identified as "Change Order" to the Contract

- b. Purchase Order (version confirmed by Supplier in writing) as defined in Clause 1.16 and all documents incorporated therein by reference
 - 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
 - e. Purchaser's specifications and
 - f. Purchaser's terms and conditions.
- 2.3 The Incoterms version current at the Effective Date of the Contract shall apply. If no specific Incoterms' concept has been stated in the Contract or subsequently agreed by both Parties, delivery will be made (i) Ex works (Supplier's or Supplier's sub-supplier's works) for domestic deliveries (delivery within the country in which the Scope of Supply is performed), or (ii) it will be made FCA (free carrier, Supplier's or sub-supplier's works) for international transactions. Irrespective of the delivery term, for purpose of determining compliance with the Delivery Date, the delivery shall be deemed to have been made on the date the Supplier notifies the Purchaser that the Scope of Supply is ready for shipment.

3. Delivery

- 3.1 Supplier shall make commercially reasonable efforts to deliver the Scope of Supply 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 such Letter of Credit or advance payment is required in the Contract 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, (ii) Changes, (iii) Purchaser's failure to fulfill any obligation under the Contract, (iv) delay caused by End-User or any party engaged by Purchaser, (v) delay in obtaining export license, (vi) Purchaser's delay in delivery of any documentation or approvals to Supplier and (vii) delays caused by a sub-supplier where the sub-supplier was designated by Purchaser or End User.
- 3.4 In any event Supplier shall have no responsibility for any delay caused by a sub-supplier where such sub-supplier has been designated by Purchaser or End User.
- 3.5 Except in the case of Force Majeure, Purchaser shall reimburse Supplier for costs of extra transportation, storage and/or administration fees incurred as a result of any delay resulting from reasons not attributable to Supplier.
- 3.6 In the event Supplier fails to meet the Delivery Date for more than two (2) calendar weeks (grace period) due to reasons for which Supplier or its sub-suppliers are directly responsible, and provided that the Purchase Order expressly provides Liquidated Damages for such failure, Purchaser shall be entitled to require Supplier to pay Liquidated Damages at the rate stated in the

Purchase Order.

4. Force Majeure

- 4.1 Supplier shall not be liable for any non-performance, loss, damage, or delay due to war, riots, fire, flood, strikes or labor difficulty, governmental acts such as, but not limited to, trade restrictions including embargoes, acts of God, acts of the Purchaser, its customer or the End-User, delays in transportation, inability to obtain necessary labor or materials from usual sources, or other causes beyond the reasonable control of Supplier. In the event of delay in performance due to any such cause, the Delivery Date or time for completion of the Services will be extended to reflect the length of time lost by reason of such delay. Payment obligations shall not be affected by force majeure events. If the grounds for force majeure continue for more than six (6) months, either Supplier or Purchaser may terminate the Contract upon seven (7) Days written notice to the other Party.
- 4.2 Supplier shall be entitled to be compensated for the extra costs caused by the interruption, or, in case of termination, for the work done prior to termination, and the expenses for non-cancelable procurements. Purchaser shall be entitled to receive the work for which it has paid.

5. Transfer of Title and Risk

- 5.1 Unless otherwise required by the applicable compulsory law, title to the Scope of Supply shall be transferred to Purchaser after Supplier has received payment in full of the Contract Price.
- 5.2 Risk of loss or damage to the Scope of Supply shall pass to Purchaser from the Supplier upon delivery according to applicable Incoterms.

6. Price and Payment

- 6.1 Supplier is entitled to receive payment of the Contract Price on the dates determined in the 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 Supplier's hourly rates as specified in the Purchase Order. The Contract Price and any part thereof are exclusive of sales, excise duties, VAT, sales taxes or similar taxes and duties.
- 6.2 All payments shall be made net, without any deductions, within thirty (30) Days after date of invoice. Payment terms shall be as specified in the Purchase Order or any respective Change Order or, if not included therein, as specified in the Quotation.
- 6.3 If the Purchaser does not comply with the agreed dates of payment, Purchaser shall be liable, without reminder, for interest with effect from the agreed date on which payment was due, at a rate depending on the normal interest conditions at the Purchaser's domicile, but not less than five percentage points (5%) above the three months' LIBOR (London Interbank Offered Rate) applicable at the due date of the delayed payment.
- 6.4 In case of late payment, Supplier may, after having notified the Purchaser in writing, suspend its performance of the Scope of Supply until the open and due invoices have been paid.
- 6.5 If Purchaser and Supplier agreed on issuing a Letter of Credit by Purchaser in favor 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 bill of lading, airway bill or warehouse receipt, as applicable, or whatever documents as have been agreed upon between the Parties.

- 6.6 If the cost to the Supplier of performing its obligations under the Contract shall be increased after the date of Quotation by reason of the making of any 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.
- 6.7 Both Parties shall be entitled to set-off due amounts in accordance with the applicable law, provided however, that the party effecting a set-off shall provide prior written notification detailing the reason for the set-off to the other Party.

7. Inspection, Acceptance

- 7.1 The Scope of Supply shall be subject to Purchaser's final inspection upon receipt at the delivery site. Claims for damage, shortage, errors in shipping or rejection of the Scope of Supply, or portion thereof, must be made by Purchaser in writing within fourteen (14) Days following the date of receipt at the delivery site, or such other time period as agreed in the Purchase Order or provided by applicable law, or such claims are waived and the Scope of Supply is deemed to be irrevocably accepted by Purchaser. Purchaser's sole remedy for such claims is repair or replacement of the Scope of Supply by Supplier. After the expiration of the aforesaid fourteen (14) Day period, all claims for defects shall be remedied in accordance with Clause 9, Warranty herein.
- 7.2 Services shall be accepted or rejected upon completion of such Services.
- 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 Purchaser and Supplier may request, in writing, Changes as defined in Clause 1.3 hereof. As promptly as practicable after receipt of a request for a Change by Supplier, Supplier will advise Purchaser what amendments to the Contract, if any, may be necessitated by such requested Changes.
- 8.2 The Parties shall agree on a fair and equitable adjustment of such amendments to the Contract 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, 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:
 - a. the Scope of Supply will be of the kind and quality as described in the Contract and
 - b. will be free of defects in workmanship and material and

- c. will be free of defects in design, provided however that Supplier shall not be responsible for the design of the Scope of Supply (including but not limited to the selection of the materials) to the extent that the design and/or the selection of the materials has been undertaken 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 earliest of the below dates:

- a. after twelve (12) months from the initial operation of the Scope of Supply or
- b. after eighteen (18) months from delivery of the Scope of Supply or
- c. in the event that delivery is delayed or impeded for reasons beyond Supplier's control, after eighteen (18) months from the date of Supplier's notification that the Scope of Supply is ready for dispatch.

Where the Scope of Supply is limited to Services only, the Warranty Period shall commence on completion of such Services and shall terminate on the end of the twelfth (12) month thereafter.

9.3 If, during the Warranty Period, the Scope of Supply fails to meet the requirements set out in this Clause 9.1, then Purchaser shall give written notification to Supplier stating the reasons therefor. Within seven (7) Days (or such longer period that is reasonable under the circumstances) of receipt of Purchaser's notification, Supplier shall commence the repair, modification or replacement of the defective part. Purchaser shall make the Scope of Supply, or the defective part thereof, available for correction. 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, 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 then the Warranty Period of such repaired or replaced part shall commence on the date of completion thereof and shall continue for a period of six (6) months or until the end of the Warranty Period established in Clause 9.2, whichever is the later. In any event such extended warranty period shall not exceed six (6) months after the end of the Warranty Period.

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

9.6 Correction of nonconformities in the manner and for the period of time provided within this Clause 9 shall constitute fulfillment of all liabilities of Supplier to Purchaser (which liabilities shall be subject to the limitations of liability contained elsewhere in the Contract, including without limitation, Clause 21), whether based on contract, negligence or otherwise, with respect to Scope

of Supply including any Services performed. Supplier makes no other warranty, guarantee or representation in respect of the Scope of Supply including any Services performed 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 EXTENT PERMITTED BY LAW.**

10. Performance Guarantee

- 10.1 Unless certain requirements have explicitly been specified and accepted by Supplier in a written Contract document, Supplier shall not provide performance guarantees.
- 10.2 If a performance guarantee has been agreed upon, it shall be fulfilled if the agreed requirements have been reached in a performance test executed in the Supplier's or its sub-supplier's factory.

11. Intellectual Property

- 11.1 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. Supplier shall not use technical documentation received from Purchaser for any purpose other than to fulfill the Contract.
- 11.2 Any know-how, inventions, patents, copyrights or the like belonging to or provided by Supplier and used for or developed in the course of the fulfillment of the Contract by Supplier shall remain Supplier's property, and no ownership shall be transferred to Purchaser, Purchaser's customer or End-User with respect to such know-how, inventions, patents and copyrights, independent of the hardware on which such know-how, inventions, patents or copyrights is made available (machinery, paper, electronic medium, etc.). However, End-User shall be granted a limited right to use such know-how, invention, patents, copyright or the like for the operation, maintenance and repair of the Scope of Supply on a non-exclusive basis, which right shall not include the use of the said intellectual property for the reproduction of the Scope of Supply or parts thereof.
- 11.3 Supplier shall make its best endeavors to ensure that the Scope of Supply and any part thereof, in the particular form designed and sold by Supplier, shall not infringe any intellectual property rights of third parties. In the event of any infringement of intellectual property rights relating to the said 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 is rendered non-infringing. The obligations of Supplier set forth herein are contingent upon (i) Supplier receiving prompt written notice from Purchaser of such infringement; (ii) Supplier receiving assistance from Purchaser in the defense and (iii) the right of Supplier to settle or defend.
- 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) services performed using Purchaser's documentation, (iii) the use of the Scope of Supply or any part

thereof in conjunction with any other product in a combination not furnished by Supplier as part of the Scope of Supply or (iv) products fabricated by using the Scope of Supply. As to any such equipment, service, product, part or use in such combination, Supplier assumes no liability whatsoever for infringement of intellectual property rights of third parties, and Purchaser shall indemnify Supplier against any respective infringement claims. Supplier shall co-operate with Purchaser in the same manner as required by Supplier under 11.3(i) to (iii) herein above.

- 11.5 Supplier's copyrighted material shall not be copied by Purchaser except for archiving purposes or to replace a defective copy. Purchaser's copyrighted material shall not be copied by Supplier except for archiving purposes or to replace a defective copy.

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:
- 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 of Purchaser's intention to terminate the Contract as a result of such breach, and Supplier shall have failed, within three weeks after receipt of such notice (or such extended period as is considered reasonable and agreed by the Parties), 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 and accepted by Purchaser. If the Parties cannot agree on the value for such portion of Scope of Supply so terminated, a neutral expert to be determined by both Parties shall fix the price, and this price shall be accepted by both Parties. For the determination of the price, Supplier's cost related to the partial Scope of Supply and the value said partial Scope of Supply has for the Purchaser shall be taken into consideration on a fair and true basis. In case Purchaser does not accept any part of the Scope of Supply, Purchaser shall, at Supplier's costs, return any tangible and intangible goods already delivered to Supplier, and Supplier shall reimburse the purchase price received. Supplier shall not owe any further payments.
- 12.3 Supplier shall have the right to terminate the Contract (or any portion thereof) for cause in the event that Purchaser:
- c. 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
 - d. fails to comply with any material terms of the Contract, including but not limited to, failure to make any payment when due or to fulfill any payment conditions.

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 but not limited to cancellation costs under subcontracts and/or expenses for non-cancelable procurement.

13. Termination for Convenience

13.1 Purchaser shall have the right to terminate the Contract upon fifteen (15) Days' prior written notice to Supplier, and Supplier shall stop its performance upon the receipt of such notice except as otherwise agreed with Purchaser. If Purchaser terminates the Contract for convenience, it shall pay Supplier:

- a. the agreed unit price for Scope of Supply completed and delivered, plus
- b. additional material and labor costs incurred, and for engineering services supplied by Supplier with respect to the canceled items, which shall be charged to Purchaser at Supplier's rates in effect at the time of cancellation, but which shall not exceed the Contract Price for such items, plus
- c. six percent (6%) of the costs and expenses referred to in (b) above in lieu of profit, plus
- d. such other costs and expenses, including cancellation charges under subcontracts, storage costs, etc., as Supplier may incur in connection with such cancellation or termination or
- e. in the event a cancellation schedule is included as part of the Contract, the amount specified on such cancellation schedule

14. Suspension

14.1 If Purchaser decides to suspend the Contract, Supplier shall be entitled to be compensated for any proven costs caused by the suspension. If the suspension lasts for more than two (2) months, the Contract shall be deemed to be terminated for convenience in accordance with Clause 13.

14.2 In case of suspension according to Clause 14.1 or Clause 6.4, Supplier shall resume work upon written instruction from Purchaser, receipt of payments due and owing by Purchaser under the Contract, and written agreement between the Parties of Changes as may be requested, as soon as the required workshop capacity is available.

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 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 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 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.

- 15.2 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 (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 require proprietary or confidential treatment of the information by such third party.

16. Export Control

- 16.1 Supplier shall export and/or re-export any Export Item in accordance 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.

- 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. As 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.

17. Indemnity

- 17.1 **BOTH PARTIES SHALL INDEMNIFY AND HOLD HARM-LESS THE OTHER PARTY OF DAMAGE TO THIRD PARTY TANGIBLE PROPERTY, OR FOR BODILY INJURY (INCLUDING DEATH), OR BOTH, ARISING OUT OF THE PERFORMANCE OF THE CONTRACT TO THE EXTENT THAT SUCH DAMAGE OR INJURY IS ATTRIBUTABLE TO THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFYING PARTY. ANY CLAIM OF CONTRIBUTION OR INDEMNITY BETWEEN SUPPLIER AND PURCHASER SHALL BE RESOLVED ON THE BASIS OF EACH PARTY'S PERCENTAGE OF NEGLIGENCE, AFTER RESOLUTION OF THE THIRD PARTY CLAIM ON WHICH SUCH LIABILITY IS BASED.**

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 US dollars (\$ 1,000,000.00) per occurrence and two million US dollars (\$ 2,000,000.00) in the aggregate.
- b. Transport insurance in accordance with any agreed trade term, which shall be construed in accordance with the most current version of 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 law 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 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. Applicable Law / Dispute Resolution

19.1 Applicable Law

The Contract is construed and shall be interpreted in accordance with the laws of the State of Texas, U.S.A. excluding its law on the conflict or choice of laws.

19.2 Dispute Resolution, Jurisdiction Any and all disputes arising under or relating to this Contract, including any claims created by statutory law, are referred to in this paragraph as a "Dispute." Should a Dispute arise, the parties shall first seek to resolve it by informal mediation. Mediation shall be initiated by one party sending a written request for mediation, together with a description of the Dispute, to the other, and shall proceed in any manner in which the parties may agree. Any Dispute not resolved by mediation within 45 Days after written notice of the request for mediation shall be resolved in accordance with a.) or b.) below, as applicable.

- a. Any Dispute involving a Purchaser that is not incorporated, or does not have its principal offices in the U.S.A., shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules. The number of arbitrators shall be one (1) unless the amount in dispute exceeds the equivalent of one million U.S.A. dollars (\$1,000,000), in which event it shall be three (3). When three (3) arbitrators are involved, each Party shall have the right to nominate an arbitrator, and the chairman shall be appointed by the two arbitrators. The seat, or legal place, of arbitration shall be Houston, Texas. The arbitration shall be conducted in the English language. No punitive damages may be awarded. The decision of the arbitrator(s) shall be final and

binding upon the Parties, and, to the extent permitted under the applicable law, neither Party shall seek recourse to a law court or other authorities to appeal for revisions of such decision.

- b. Any Dispute not involving a Purchaser that is not incorporated, or that does not have its principal offices, in the U.S.A., shall be brought in an appropriate court in Harris County, Texas and the Parties hereto consent to the exclusive jurisdiction of such court in respect of all such claims. Each Party hereby submits to and accepts generally and unconditionally the jurisdiction of such court.

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 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 third parties. However, such restriction shall not apply in instances where 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 or Purchaser'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 endeavors to replace such provision by a valid one covering the original commercial intention as far as legally possible.

21 Limitation of Liability

- 21.1 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 BUT NOT LIMITED TO NEGLIGENCE) FOR ANY LOSS OF PROFIT, LOSS OF CONTRACTS OR EARNINGS, 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 HARM-LESS SUPPLIER FROM ANY CLAIM MADE BY END-USER OR PURCHASER'S CUSTOMERS FOR SUCH LOSSES. THE REMEDIES OF PURCHASER SET FORTH HEREIN ARE EXCLUSIVE, AND SUPPLIER'S LIABILITY WITH RE-SPECT TO ANY CONTRACT, INDEMNITY, TORT (INCLUDING NEGLIGENCE), UNDER ANY WARRANTY, STRICT LIABILITY OR OTHERWISE SHALL NOT EXCEED ONE HUNDRED PERCENT (100%) OF THE CONTRACT PRICE**

OR PORTION THEREOF UPON WHICH SUCH LIABILITY IS BASED, UNLESS CLAIMS ARISE FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE SUPPLIER.

- 21.2 As used herein "gross negligence" shall mean reckless disregard of, or wanton indifference to, harmful and avoidable consequences and "willful 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 "willful misconduct" shall not include any act or omission or any error of judgment or mistake made in good faith.

Attachment 1

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 Labor Provided by Purchaser

- A2.1 Where required by the Contract or where subsequently agreed between the Parties, Purchaser shall provide, at its own expense, skilled and unskilled labor sufficient in quantity and sufficiently competent to undertake the relevant identified work. Such labor shall include at least one foreman who is fluent in the English language.
- A2.2 Purchaser shall procure and maintain suitable Workman's and Employer's Liability Insurance as required by the applicable law for any labor provided by him under the Contract.
- A2.3 The skilled and unskilled labor provided by the Purchaser or End-User shall remain the servants and under the control of the Purchaser or End-User, as the case may be, but shall work to the orders and instructions of the Supplier's representative. The Supplier shall not be liable for any act, omission or negligence of such labor, except to the extent that such act or omission is as a result of the proven negligence of the Supplier's representative (subject always to the limitations contained in Clause 21 of the Terms and Conditions).

A3 Facilities Provided by Purchaser

- A3.1 The Purchaser shall provide the following facilities at his own expense:
- A3.1.1 Adequately furnished and equipped living accommodation to European standards for use by the Supplier's personnel throughout their period at Site together with subsistence and other reasonable expenses of the Supplier's personnel.
- A3.1.2 Transportation for the Supplier's personnel between Site and place of arrival and departure and for transportation between accommodation and Site.
- A3.1.3 Any special clothing for the Supplier's personnel that may be required for the applicable Site 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 but not limited to, 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 its 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 the Christmas/New Year period, the Supplier's personnel are entitled to a return visit to their country of residence. The 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 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. The Purchaser's representative shall sign such time sheets and return them to Supplier's personnel within forty eight (48) hours of receipt. Should the Purchaser's representative disagree with the content of the time sheets, he shall discuss such disagreement with Supplier's representative within such forty eight (48) hour period.

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. 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 bank guarantee or surety given by Supplier.