

1. SCOPE OF CONTRACT

- 1.1 These General Terms and Conditions, the SULZER proposal ("Proposal") to which these terms are attached, and any other documents applicable to the Work that are signed by both SULZER and Texas A&M University, a member of The Texas A&M University System, an agency of the State of Texas, (TAMU or CUSTOMER) shall constitute the complete agreement ("Contract") between SULZER and CUSTOMER for any repairs, modification, manufacture and/or sale of replacement parts and/or other customer support services ("Work") rendered by SULZER on CUSTOMER's equipment or any part thereof ("Equipment"), effective upon acceptance of SULZER's Proposal or upon issuance of an order from CUSTOMER for the Work.
- 1.2 These General Terms and Conditions shall supersede any other agreement or representation, oral or in writing, with respect to the Work (other than in CUSTOMER's Purchase Order Terms) .
- 1.3 CUSTOMER's assent to these General Terms and Conditions shall be conclusively presumed from CUSTOMER's failure to object to them in writing, as well as from any direction from CUSTOMER to SULZER to proceed with the order, or from CUSTOMER's acceptance of all or part of the Work.
- 1.4 SULZER shall have the right to subcontract any or all work covered by the Contract. Any assignment of this Contract or any rights hereunder by either party without the prior written consent of the other party shall be void.
- 1.5 Should any provision of this Contract prove to be invalid or not enforceable by a court of competent jurisdiction, such invalidity or non-enforceability shall not affect the validity of the remaining provisions of the Contract. SULZER and CUSTOMER shall use their best efforts to agree on a provision that has commercially and legally the most similar effect as the invalid or non-enforceable provision.
- 1.6 The Contract shall only be amended in a writing that is signed by both SULZER and CUSTOMER.
- 1.7 SULZER shall perform the Work in accordance with the Contract.

2. PRICE

- 2.1 Prices are stated in U.S. dollars, unless otherwise specifically provided on SULZER's Proposal or as may be otherwise agreed upon in writing by SULZER and CUSTOMER.
- 2.2 The price stated on SULZER's Proposal or Confirmation of Order is net without any deductions whatsoever.
- 2.3 All costs not specifically set out in SULZER's Proposal, including (but not limited to) charges for freight, packing, carriage, insurance, customs duties, fees for export, transit, import and such other permits and certificates as may be necessary, any federal, state or local property, license, privilege, sales, use, excise, gross receipts or other like taxes which may now or hereafter be applicable, shall be borne by CUSTOMER. SULZER is responsible for all taxes imposed on it as an employer and as a function of its general business operations. As an agency of the State of Texas, CUSTOMER is tax exempt.
- 2.4 If charges for packing, freight, carriage, insurance, customs duties or other additional costs are separately stated on SULZER's Proposal and included in the Proposal price, SULZER reserves the right to adjust its price for such for packing, freight, carriage, insurance, customs duties or other additional costs should those costs be modified. In addition, an appropriate price adjustment shall apply in case the work completion date and/or shipping date has been subsequently extended due to any of the reasons stated in Article 4 of this Contract.

3. CUSTOMER'S OBLIGATIONS

- 3.1 CUSTOMER shall take all necessary and reasonable measures to support SULZER in the execution of the Contract. CUSTOMER will expeditiously provide SULZER all available operational information regarding the Equipment.
- 3.2 CUSTOMER shall: (1) immediately notify SULZER of any contamination that may exist in any part of its facility or on the Equipment where Work may be or is being performed, which contamination may be due to any hazardous material, including, but not limited to, asbestos- containing parts, insulation or gaskets or nuclear radiation; and (2) at its own expense, decontaminate its facility or parts of the Equipment so that such hazardous material is reduced or eliminated to a level in which the facility is safe to occupy and/or such Equipment may be handled and/or shipped in a safe manner and in accordance with all applicable laws and regulations and industry accepted standards, without special licensing from any government regulatory authority.

- 3.3 CUSTOMER shall, at its own cost and expense, assume responsibility as generator of the hazardous material and to manage any hazardous or regulated waste arising from the decontamination of its Equipment or facility, all in accordance with applicable laws and regulations.
- 3.4 Notwithstanding anything contained in this Contract to the contrary, until said decontamination or radioactive environment has been reduced to a safe, legal and industry accepted standard for occupancy by SULZER's personnel without the need for special protective clothing, SULZER shall be under no obligation to remove, disassemble, repair, reassemble or reinstall or provide any other service to such Equipment.
- 3.5 Notwithstanding any other provision of this Contract, for all Work done on a time and materials basis, including, specifically, change orders, SULZER will provide on a daily basis to CUSTOMER's representative for the Work documentation of SULZER's activities and man-hours worked that day, which documentation shall be reviewed and approved each day (or if approval cannot be given that day, within 24 hours of submission) by CUSTOMER's Representative. If the documentation cannot be approved in its entirety, CUSTOMER's Representative shall within the times specified above approve those parts of the documentation that can be approved, and shall give SULZER sufficient explanation as to those items that need further clarification or resolution, so that SULZER may address them promptly. If SULZER provides CUSTOMER's Representative with the required documentation and CUSTOMER fails to approve or reject the documentation as set out in this section, SULZER's documentation shall be deemed approved by CUSTOMER.

4. WORK COMPLETION / SHIPPING

- 4.1 The dates specified for Work completion and/or shipping in the Contract are "the best estimate" and are based upon prompt receipt of necessary parts, material, replacement part(s) and information.
- 4.2 These dates shall be reasonably extended for a minimum time period equalling the length of delay if: (a) information required by SULZER from CUSTOMER to execute the Work is not received in a timely manner or if changes are made which delay Work completion and/or shipping as previously agreed by SULZER and CUSTOMER; (b) SULZER is not able to complete or ship the Work because of hindrances that despite due care SULZER cannot avoid (inclusive of those occurring in the field service of its major suppliers or third parties), such as epidemics, act of civil or military authority, mobilization of armed services, war, riots, strikes, boycotts, picketing, lock-outs or other disturbances, serious breakdowns, accidents, labor conflicts, delayed or deficient delivery of manufactured products, the need to scrap important components due to defective casting, official or other measures of whatever kind, transport difficulties, natural catastrophes and acts of God; or (c) if CUSTOMER or a third party is behind schedule with work which it must carry out prior to performance of all or a pertinent part of the Work, or is late in fulfilling its contractual obligations (including, but not limited to, failure by CUSTOMER to observe terms of payment).
- 4.3 SULZER shall not be liable for any loss or damage to CUSTOMER resulting from any delay in performance or delivery, whether due to non-conformance as mentioned above or otherwise.

5. TERMINATION

5.1 SULZER's Default

In the event that SULZER fails to comply with a material obligation in connection with the performance of the Work ("SULZER's Default"), CUSTOMER shall give SULZER written notice of SULZER's Default, specifying its nature and stating that CUSTOMER intends to terminate the Contract. If SULZER fails to remedy SULZER's Default or fails to offer a reasonable plan to cure SULZER's Default within a reasonable time after the receipt of said notification, but not less than three (3) days after CUSTOMER's written notification, CUSTOMER may terminate the Contract.

5.2 CUSTOMER's Default

5.2.1 In the event CUSTOMER fails to comply with a material obligation in connection with the Contract, including but not limited to compliance with Article 3 or Article 10 of these General Terms and Conditions ("CUSTOMER's Default"), SULZER shall give CUSTOMER written notice of CUSTOMER's Default, specifying its nature and stating that SULZER intends to suspend performance of the Work or that it intends to terminate the Contract.

5.2.2 If CUSTOMER fails to remedy CUSTOMER's Default within a reasonable time after the receipt of said notification, including the failure of the payment of SULZER's invoice not later than five (5)

days after SULZER's notice of default, SULZER may at its option suspend performance of the Work or may immediately terminate the Contract.

5.3 Payments in the Event of Default

5.3.1 In the event the Contract is terminated by SULZER due to CUSTOMER's Default, CUSTOMER shall pay to SULZER the agreed prices for the portion of the Work completed prior to the date of termination

6. RISK OF LOSS OR DAMAGE

6.1 Risk of loss of or damage to the Equipment shall pass from SULZER to CUSTOMER upon delivery of Equipment.

6.2 For Work performed at CUSTOMER's facility, risk of loss of or damage to the Equipment shall be with SULZER while the Equipment is in SULZER's care, custody, and control.

7. WARRANTY

- 7.1 SULZER warrants that the Work 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 Work, or eighteen (18) months from shipment, whichever occur first ("Warranty Period"). If within the Warranty Period any Work fails to conform to this warranty, in complete fulfillment of all its liabilities under this warranty, and provided that CUSTOMER gives SULZER prompt written notice of such failure, SULZER shall, at SULZER's option, rework, repair, or replace the defective Work. SULZER shall have the opportunity to provide necessary manpower for the removal and reinstallation required for the rework, repair, or replacement under SULZER's warranty. Failure of CUSTOMER to furnish notice of failure or give SULZER the opportunity to provide the manpower for the warranty rework, repair, or replacement may at SULZER's option void or limit SULZER's warranty under the Contract. SULZER shall commence warranty rework within 48 hours of written notice from CUSTOMER.
- 7.2 No Work shall be deemed to have failed to meet SULZER'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, CUSTOMER's failure to properly store, install, operate or maintain the Work in accordance with good industry practices or specific recommendations of SULZER, or CUSTOMER's failure to provide complete and accurate information to SULZER concerning the operational application of the Work.
- 7.3 CUSTOMER shall make the replacement part(s) available for correction. The warranty contained in this Article 7 will terminate immediately, if CUSTOMER or a third party undertakes inappropriate or improper modifications or repairs or if CUSTOMER, in case of a defect, does not immediately notify SULZER 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 Article 7 shall constitute fulfillment of all liabilities of SULZER to CUSTOMER with respect to such Equipment.
- 7.4 SULZER 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 Work. The re-performance, repair or replacement of the Work or spare or replacement parts by SULZER under the provisions of this Article 7 shall constitute SULZER's sole obligation and CUSTOMER's sole and exclusive remedy for all claims of defects regarding the Work. CUSTOMER agrees to the foregoing section to the extent permitted by the Constitution and laws of the State of Texas.
- 7.5 To the extent permitted by the Constitution and laws of the State of Texas, SULZER shall not be liable for any loss or damage from its failure to discover or repair latent defects or inherent defects in CUSTOMER's Equipment design nor shall SULZER be liable for any warranty obligation for CUSTOMER-provided parts, regardless of installation of such parts by SULZER, however, the installation of those parts by Sulzer is warranted by Sulzer.
- 7.6 For the parts of the Work 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 replacement or completion of the rework, repair, or replacement, as applicable, or the end of the original Warranty Period, whichever is later, and no case shall extend longer than eighteen (18) months after the start of the original Warranty Period.
- 7.7 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. THE WARRANTIES FOR THE WORK CONTAINED IN THIS ARTICLE 7 ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR THE WORK. SULZER MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND WITH RESPECT TO THE WORK OTHER THAN AS

SPECIFIED IN THIS ARTICLE 7. CUSTOMER AGREES TO THE FOREGOING TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS.

8. INSPECTION AND TESTING

CUSTOMER shall make all preparations and incur all expenses incidental to any inspection and testing that CUSTOMER requires to demonstrate the ability of the Work to conform to this Contract and to fulfil the warranty set out in Article 7. SULZER shall have the right to have its representative at any inspection and testing but will not charge CUSTOMER for the expense of such representation unless the charge is otherwise included in the Contract. CUSTOMER's failure to make such inspection and testing shall be deemed to be a waiver of CUSTOMER's right of inspection and testing.

9. LIMITATION OF LIABILITY

- 9.1 THE CONTRACT PRICE IS BASED SOLELY ON THE VALUE OF THE WORK PERFORMED UNDER THE CONTRACT, AND NOT ON THE VALUE OF EITHER PARTY'S PROPERTY, PRODUCT, EQUIPMENT, DOWNTIME, OR LOSS OF BUSINESS. THEREFORE, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS CONTRACT, INCLUDING ALL DOCUMENTS MAKING PART THEREOF, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW AND WITHOUT WAIVING CUSTOMER'S SOVEREIGN IMMUNITY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR LOSS OF PROFIT OR REVENUE, LOSS OF USE, INTERRUPTION OF PRODUCTION, COST OF CAPITAL, COST OF PURCHASED OR REPLACEMENT POWER, ANY AND ALL COSTS RELATING TO DELAY (OTHER THAN ANY LIQUIDATED DAMAGES AS AGREED BY THE PARTIES), OR FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR CLAIMS BY CUSTOMER'S CUSTOMERS FOR SUCH DAMAGES, IN CONNECTION WITH THIS CONTRACT, WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE OR ANY OTHER BASIS OF LEGAL LIABILITY. 9.2 SULZER'S LIABILITY TO CUSTOMER WITH RESPECT TO ANY WORK PERFORMED OR PROVIDED UNDER THIS CONTRACT, OR ANYTHING DONE IN CONNECTION THEREWITH, WHETHER SUCH LIABILITY IS BASED ON ANY CONTRACT, INDEMNITY, TORT, (INCLUDING NEGLIGENCE), WARRANTY, STRICT LIABILITY, OR OTHERWISE, SHALL NOT EXCEED A CAP AS SET OUT AS FOLLOWS:

FOR A PURCHASE ORDER AMOUNT OF:

- | | |
|-----------------------------------------|--------------------------------------------------------------|
| • Up to \$500,000 | Cap of 2 x the PO Value |
| • Greater than \$500,000 to \$1,000,000 | Cap of 2 x the PO Value or \$1,500,000, whichever is greater |
| • Greater than \$1,000,000 | Cap of 1 x the PO Value, but not less than \$1,500,000 |

- 9.3 THE REMEDIES SET OUT IN THIS CONTRACT ARE EXCLUSIVE, AND ALL SUCH LIABILITY SHALL TERMINATE UPON THE EXPIRATION OF THE WARRANTY PERIOD, IF NOT SOONER TERMINATED.
- 9.4 CUSTOMER AGREES TO THIS SECTION 9 TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS.

10. TERMS OF PAYMENTS

- 10.1 SULZER's invoices shall be deemed correct unless CUSTOMER notifies SULZER otherwise in writing not later than twenty (20) days after the date of the invoice.
- 10.2 Except as otherwise provided by the Contract, payments shall be made by CUSTOMER Net 30 without deduction or set-off to such bank accounts and in such currency as stated in the invoice.
- 10.3 All instalment deliveries shall be separately invoiced and paid for without regard to subsequent deliveries.
- 10.4 Prompt Payment Act. Payment from TAMU will be due thirty (30) days from the date TAMU receives the invoice. All past due amounts will be subject to a finance charge in accordance with the Texas Prompt Payment Act, Chapter 2251, Texas Government Code.
- 10.5 SULZER shall be entitled to immediately stop or suspend the performance of its Work in accordance with Article 6 if CUSTOMER fails to make any payment when due.

11. CHANGES IN PRODUCT DESIGN / PROPRIETARY INFORMATION

- 11.1 There shall be no substitutions that require an increase in cost without the prior written approval of CUSTOMER.
- 11.2 All information, including plans, specification, and data, that is furnished or prepared by either party specifically in connection with this Contract, including, specifically, this Contract and these General Terms and Conditions, shall be deemed to have been provided on a confidential basis and shall remain the disclosing or originating party's exclusive property, developed at the disclosing or originating party's expense and containing its trade secrets. Neither party shall copy or reproduce such information for any purpose other than operation and maintenance of the Work, as may be approved by the disclosing or originating party in writing, or as required by law.
- 11.3 Neither party shall, without the prior written consent of the other party to this Contract, either directly or indirectly communicate any information regarding, or provided by the disclosing or originating party under, this Contract to a third party, or use such information or any data derived therefrom for any purpose other than as permitted under this Contract. Any and all such information submitted in connection with a Proposal which does not result in an order shall be returned to SULZER upon request.

12. TOOLING / INTELLECTUAL PROPERTY OWNERSHIP

- 12.1 SULZER's charges for tooling, dies, and/or gauges, if shown on the invoice, constitute only a part of SULZER's actual cost for such tooling, dies, and/or gauges, and do not convey to CUSTOMER any ownership or the right to remove the same from SULZER's premises. CUSTOMER, however, may purchase such tooling, dies, and/or gauges upon request, at the discretion of SULZER.
- 12.2 All discoveries, inventions, developments, improvements and techniques pertaining to SULZER's products or services (whether or not capable of patent or like protection) which SULZER or employees, agents, or subcontractors of SULZER may conceive or make alone or with others and which may directly or indirectly result from or in the performance of the work by SULZER, shall be the sole and absolute property of SULZER. SULZER will document the Work to the extent it deems reasonably necessary and possible, and as otherwise required by this Contract. Notwithstanding the preceding, SULZER grants to CUSTOMER a perpetual, royalty-free, non-exclusive license to use and reproduce such discoveries, inventions, developments, improvements, and techniques to the extent that is necessary for the operation, maintenance, and repair of the Work performed under this Contract.

13. PATENTS

- 13.1 The Work shall be delivered to CUSTOMER free of any rightful claim of any third party for infringement of any patent. Provided that SULZER is notified of such claim promptly in writing, and given appropriate authority, information, and assistance from CUSTOMER, SULZER shall defend or may settle, in consultation with the Texas Office of Attorney General, at its expense, any suit or proceeding against CUSTOMER so far as the suit is based on a claimed infringement due to the Work, and SULZER shall pay all damages and costs awarded in that suit against CUSTOMER due to such breach.
- 13.2 SULZER at its expense and option shall procure for CUSTOMER the necessary licenses and right to continued utilization of said invention or replace or modify the Work so that it becomes non-infringing, provided that any substituted or modified Work shall meet all the requirements and be subject to this Contract.
- 13.3 This Article 13 states SULZER's entire liability for patent infringement. SULZER's shall not be liable to CUSTOMER under this Article 13 for any replacement part(s) manufactured to CUSTOMER's design, or for the use of any replacement part(s) sold hereunder in conjunction with any other product in a combination not furnished by SULZER as part of the Work. As to any such replacement part(s), component part or use in such combination, SULZER assumes no liability whatsoever for patent infringement.

14. PLACE OF JURISDICTION AND APPLICABLE LAW

- 14.1 This Contract is governed by and will be construed in accordance with laws of the State of Texas without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of

any jurisdiction other than the State of Texas. The United Nations Convention on Contracts for the International Sale of Goods (CGIS) is hereby specifically rejected.

- 14.2 The dispute resolution process provided in Chapter 2260, Texas Government Code, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by TAMU and SULZER to attempt to resolve any claim for breach of contract made by SULZER that cannot be resolved in the ordinary course of business. SULZER shall submit written notice of a claim of breach of contract under this Chapter to the University Contracts Officer of Texas A&M University, who shall examine SULZER's claim and any counterclaim and negotiate with SULZER in an effort to resolve the claim.

15. AUDIT

CUSTOMER shall have the right to audit SULZER's non-proprietary books and records to confirm costs invoiced to CUSTOMER, provided, however, that this audit right does not apply to Work performed on a fixed price basis, nor may CUSTOMER examine components of rates for Work performed on a time and materials basis. For time and material priced Work, CUSTOMER's representatives may (without limitation) conduct verifications such as counting employees at the Work site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with SULZER employees, field and agency labor, subcontractors and vendors.

16 INDEMNITY

Subject to the limitations of liability contained in Article 9 of these General Terms & Conditions, each party shall indemnify and hold harmless 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 Work to the extent that such damage or injury is attributable to the negligence or wilful misconduct of the indemnifying party. Any claim of contribution or indemnity between SULZER and CUSTOMER 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. Each party shall assume its sole negligence. TAMU AGREES TO THE FOREGOING SECTION TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS AND WITHOUT WAITING ITS SOVEREIGN IMMUNITY.

17. INSURANCE

See attached Exhibit A for TAMU Insurance Requirements

18. COMPLIANCE WITH LAW / SULZER CODE OF BUSINESS CONDUCT

- 18.1 SULZER shall comply with applicable federal, state, and local statutes, regulations and public ordinances governing the Work.
- 18.2 SULZER is committed to conducting its business in accordance with its Business Code of Conduct, the provisions of which can be found at https://www.sulzer.com/-/media/files/about-us/investors/financial-reporting/annual-results-2016/sulzer_code_of_business_conduct.ashx?la=en. SULZER and CUSTOMER agree that all Work under this Contract shall be performed in accordance with this Code.

19. GENERAL

- 19.1 The failure at any time of either party to enforce any of the provisions of this Contract shall in no way be construed to be a waiver of such provisions, nor in any way construed to affect the validity of this Contract or any part hereof, or the right of any party thereafter to enforce each and every such provision.
- 19.2 In the event a court or other tribunal of competent jurisdiction at any time holds that any provision of this Contract is invalid, the remainder of this Contract shall not be affected thereby and shall continue in full force and effect.
- 19.3 This Contract shall constitute the entire understanding between the parties, superseding any and all previous understandings, oral or written, pertaining to the subject matter contained therein. The parties have entered into this Contract in reliance upon the representations and mutual undertakings contained

herein and not in reliance upon any oral or written representation or information provided to one party by any representative of the other party. This Contract shall not be construed in favor of or against either party on the basis of its authorship.

19.4 This Contract may be amended or supplemented only by a writing signed by both SULZER and CUSTOMER.

19.5 There are no third-party beneficiaries to this Contract.

20. State Contracting Requirements:

Delinquent Child Support Obligations. A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas Family Code*, the SULZER or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, SULZER agrees that any payments owing to SULZER under this Agreement may be applied directly toward certain debts or delinquencies that SULZER owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

Prohibited Bids and Agreements. A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The *Texas Government Code* requires the following statement: "Under Section 2155.004, *Texas Government Code*, the SULZER certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

Public Information. SULZER acknowledges that TAMU is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon TAMU's written request, SULZER will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under Chapter 552, *Texas Government Code*, to TAMU in a non-proprietary format acceptable to TAMU. As used in this provision, "public information" has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which TAMU has a right of access. SULZER acknowledges that TAMU may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.

Governing Law. The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.

Venue. Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against TAMU shall be in Brazos County, Texas.

Force Majeure. Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.

Access by Individuals with Disabilities

Sulzer Turbo Services Houston, Inc. ("SULZER")
GENERAL TERMS AND CONDITIONS
Service, Repair, Modification, Manufacture and/or Sale of
Replacement Parts

SULZER

SULZER represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to Customer under this Agreement (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the Texas Administrative Code and Title 1, Chapter 206, §206.70 of the Texas Administrative Code (as authorized by Chapter 2054, Subchapter M of the Texas Government Code). To the extent SULZER becomes aware that the EIRs, or any portion thereof, do not comply then SULZER represents and warrants that it will, at no cost to Customer, either (1) perform all necessary remediation or (2) replace the EIRs with new EIRs.

If VPAT has been approved and vendor wants to revise language offer::

SULZER represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to Customer under this Agreement (collectively, the "EIRs") conform to the information set forth in SULZER's Voluntary Product Accessibility Template (VPAT). Should barriers to access occur as a result of typical use of the EIRs, SULZER will endeavor to address any accessibility concerns of Customer with regard to the applicable requirements set forth in Title 1, Chapter 213 of the Texas Administrative Code and Title 1, Chapter 206, §206.70 of the Texas Administrative Code (as authorized by Chapter 2054, Subchapter M of the Texas Government Code).

Franchise Tax Certification. If SULZER is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then SULZER certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that SULZER is exempt from the payment of franchise (margin) taxes.

Products and Materials Produced in Texas. SULZER agrees that in accordance with Section 2155.4441, *Texas Government Code*, in performing its duties and obligations under this Agreement, SULZER will purchase products and materials produced in Texas when such products and materials are available at a price and time comparable to products and materials produced outside of Texas.

Loss of Funding. Performance by TAMU under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, TAMU will issue written notice to SULZER and TAMU may terminate this Agreement without further duty or obligation hereunder. SULZER acknowledges that appropriation of funds is beyond the control of TAMU.

State Auditor's Office. SULZER understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. SULZER agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. SULZER will include this provision in all contracts with permitted subcontractors.

Non-Waiver. SULZER expressly acknowledges that TAMU is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMU of its right to claim such exemptions, privileges, and immunities as may be provided by law.

SULZER Certification regarding Boycotting Israel. Pursuant to Chapter 2270, *Texas Government Code*, SULZER certifies SULZER (1) does not currently boycott Israel; and (b) will not boycott Israel during the Term of this Agreement. SULZER acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

SULZER Certification regarding Business with Certain Countries and Organizations. Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, SULZER certifies SULZER (1) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. SULZER acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

Conflict of Interest. By executing and/or accepting this Agreement, SULZER and each person signing on behalf of SULZER certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of The Texas A&M University System ("TAMUS") or TAMUS Board of Regents, nor any

Sulzer Turbo Services Houston, Inc. ("SULZER")
GENERAL TERMS AND CONDITIONS
Service, Repair, Modification, Manufacture and/or Sale of
Replacement Parts

SULZER

employee, or person, whose salary is payable in whole or in part by TAMU or TAMUS, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

Notices. Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email, or other commercially reasonable means and will be effective when actually received. TAMU and SULZER can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

TAMU: Address: Attn: Darrel Selman
Utilities & Energy Services
Central Utility Plant Receiving
165 Asbury St
1584 TAMU
College Station, TX 77843-1584
United States

SULZER: Address:
11518 Old La Porte Rd.
La Porte, TX 77571 USA
Attention:
Allen Thornton
Phone: (713) 567-2749
Email: allen.thornton@sulzer.com

ACCEPTED & AGREED:

Sulzer Turbo Services Houston, Inc.

Texas A&M University

Signature

Allen Thornton VP Sales

Name & Title

Aug 16, 2019

Date

Legal: *[Signature]*

Signature

ROBERT C. BOUNDS
DIRECTOR, PROCUREMENT SERVICES

Name & Title

3 Jul 2019

Date

– END OF GENERAL TERMS AND CONDITIONS –

Exhibit A

Texas A&M University

Insurance Requirements Addendum

Service Provider shall obtain and maintain, for the duration of this Agreement or longer, the insurance coverage set forth below. All coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to Texas A&M University. By requiring such insurance coverage, Texas A&M University shall not be deemed or construed to have assessed the risk that may be applicable to Service Provider under this Agreement. Service Provider shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Service Provider is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to Texas A&M University given by Service Provider at least ten days before the effective date of the cancellation.

Insurance:

Coverage

Limit

A. Worker's Compensation

Statutory Benefits (Coverage A)
Employers Liability (Coverage B)

Statutory
\$1,000,000 Each Accident
\$1,000,000 Disease/Employee
\$1,000,000 Disease/Policy Limit

Workers' Compensation policy must include under Item 3.A. on the information page of the workers' compensation policy the state in which work is to be performed for Texas A&M University. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted

B. Automobile Liability

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage;

C. Commercial General Liability

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000
Damage to rented Premises	\$300,000
Medical Payments	\$5,000

The required commercial general liability policy will be issued on a form that insures Service Provider or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

Additional Endorsements

The Auto and Commercial General Liability Policies shall include the following as additional insured:

Texas A&M University System Board of Regents for and on behalf of The Texas A&M University System and the Texas A&M University,

D. Service Provider will deliver to Texas A&M University:

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement and prior to the performance of any services by Service Provider under this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

All insurance policies, with the exception of worker's compensation and employer's liability will be endorsed and include The Board of Regents for and on behalf of The Texas A&M University System, The Texas A&M University System and Texas A&M University as Additional Insureds, as per ISO endorsement forms CG 20 10 04 13 and CG 20 37 04 13, to the extent of Service Provider's indemnity obligations under the Agreement. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

All insurance policies will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System, The Texas A&M University System and Texas A&M University. No policy will be canceled without unconditional written notice to Texas A&M University at least ten days before the effective date of the cancellation. Service Provider shall send notice to Texas A&M University ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this section.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following Texas A&M University contact:

Name:	Texas A&M University Insurance Services/Emily Terral
Address:	1182 TAMU College Station, TX 77843-1182
Fax Number:	979-862-7130
Email Address:	eterral@tamu.edu

The insurance coverage required by this Agreement will be kept in force until all services have been fully performed and accepted by Texas A&M University in writing.