

ABB LIMITED GENERAL CONDITIONS OF PURCHASE

1. INTERPRETATION AND DEFINITIONS

- 1.1. Clause headings in this Contract are for ease of reference only and shall not affect the interpretation of this Contract.
- 1.2. ABB and the Supplier shall act as stated in the Contract and in a spirit of mutual trust and co-operation.
- 1.3. "ABB" means ABB LIMITED and includes ABB's successors and assigns.
- 1.4. "Completion Date" means the date for delivery of the Equipment or completion of the Services as specified in the Purchase Order.
- 1.5. "Contract" means the agreement between ABB and the Supplier, including the Purchase Order, these General Conditions and any Special Conditions, for the supply of the Equipment or performance of the Services.
- 1.6. "Contract Price" means the sum or sums stated as the price in the Purchase Order.
- 1.7. "Equipment" means all goods, materials, plant, equipment and Services to be supplied by the Supplier under the Contract.
- 1.8. "Force Majeure" means any circumstances which could not have been contemplated and is beyond the reasonable control of the parties.
- 1.9. "General Conditions" means these General Conditions of Purchase for the supply of Equipment or the performance of the Services.
- 1.10. "INCOTERMS" means the latest edition of trade terms published from time to time by the International Chamber of Commerce.
- 1.11. "Intellectual Property Rights" means all intellectual property whether registered or unregistered including, without limitation, patents, patentable inventions, trademarks, trade names, logos, know-how, copyrights, database rights, models, formulae, software, source codes, registered design, designs and trade secrets and all rights to use such intellectual property.
- 1.12. "Purchase Order" means a document issued by ABB to the Supplier detailing the Equipment, the Services, Contract Price and any Special Conditions.
- 1.13. "Services" means the provision of any installation work or other activity undertaken by the Supplier on a Site.
- 1.14. "Site" means a location stated in the Purchase Order to which the Equipment is to be delivered or where Services are to be provided.
- 1.15. "Special Conditions" means any additions or alterations to these General Conditions as stated in the Purchase Order.
- 1.16. "Supplier" means the person, firm or company to whom the Purchase Order is addressed, and shall include the Supplier's personal representatives, successors and permitted assigns.

2. PERFORMANCE OF THE CONTRACT

- 2.1. The Supplier shall supply the Equipment and shall ensure that the Equipment complies with the Contract. Without prejudice to ABB's rights including in respect of termination under this Contract, if the Supplier has not confirmed acceptance of ABB's order within eight (8) days of its issue, ABB may cancel the order in whole or in part at no cost to ABB.
- 2.2. The Supplier shall be responsible for executing the Contract with all reasonable skill, care and diligence and in accordance with recognised industry standards, and any standards, specifications and codes specified by ABB in the Contract. Whilst on Site, the Supplier shall also comply with all regulations, statutory requirements, site safety rules and all directions of ABB, and is deemed to have allowed for such compliance within the Contract Price.
- 2.3. The Supplier shall be responsible for the accuracy of any drawings, documentation and information supplied by it to ABB, and shall pay to ABB any extra costs occasioned by any discrepancies, errors or omissions therein.
- 2.4. The Equipment or Services supplied shall be of the quality and shall conform to the performance requirements stated in the Contract, or where not stated shall be fit for the purposes intended, and shall conform to all applicable laws and regulations, and any other requirements made known to the Supplier or reasonably inferred. Should no quality be specified, the Equipment or Services shall conform to British Standards Institution specifications and conditions, and European standards where applicable, and otherwise be of the best quality new materials and workmanship. Where applicable, the Equipment or Services must meet requirements of any EC directive and be supplied with supporting appropriate documentation.
- 2.5. If any of the Equipment or Services to be supplied under the Contract contains or uses any hazardous substances, or requires any special precautions to be taken to ensure safety in handling, transport, storage or use, then the Supplier shall, prior to Equipment delivery or commencement of Services, provide to

ABB written details of the nature of those substances and the precautions to be taken. The Supplier shall ensure that before despatch or commencement of Services, appropriate instructions and warnings are clearly and prominently marked on the Equipment and on any containers into which it is packed.

3. INSPECTION, TESTING, ACCEPTANCE AND DELIVERY

- 3.1. The Supplier shall complete all agreed inspection and testing of the Equipment prior to despatch or at ABB's premises, as required by ABB.
- 3.2. The Supplier shall deliver the Equipment by the Completion Date and to the place specified in the Purchase Order, or if not so specified, as requested by ABB. Delivery shall be in accordance with the latest edition of INCOTERMS as stated on the Purchase Order, or if not stated, delivery shall be DDP (UK Mainland) INCOTERMS 2010. The Supplier warrants that the Equipment will not be subject to export or re-export restrictions, sanctions, embargoes or liens. Where Services are to be provided, they shall commence on the date stated in the Purchase Order and continue for the duration stated therein, or by the stated Completion Date.
- 3.3. When the Equipment has been delivered and installed in accordance with the Contract, and has passed all required inspection and testing, it will be accepted by ABB.
- 3.4. ABB or its nominated representatives shall have the right, on reasonable prior notice, to inspect the Equipment at any time prior to despatch and if, in its reasonable opinion, any part of the Equipment is defective or otherwise does not conform with the Contract, ABB may reject it. The Supplier shall give ABB at least five (5) working days notice in writing of any tests ABB requires to have witnessed.
- 3.5. All work required to enable the Equipment or Services to pass agreed inspection and testing, or otherwise necessary to ensure conformity with the Contract, shall be carried out promptly by the Supplier at its own expense.
- 3.6. ABB reserves the right for its representatives to carry out quality audits and expediting activities at the Supplier's or its sub-supplier's premises, at all reasonable times, during normal working hours, in respect of any part of the Contract requirements.

4. EXTENSION OF TIME

- 4.1. If the Supplier is delayed in completing the Contract by any act or omission of ABB, then the Supplier shall promptly notify ABB of such delay. ABB shall grant the Supplier such extension of time as ABB considers reasonable.
- 4.2. ABB at its sole discretion may, by written notice to the Supplier, order the Supplier to suspend the supply of all or part of the Equipment or Services. Upon receipt of any such notice the Supplier shall promptly suspend further performance of the Purchase Order to the extent specified, and during the period of such suspension, shall properly care for and protect all work in progress and materials and supplies the Supplier has on hand for performance of the Purchase Order. The Supplier shall use its reasonable efforts to mitigate costs associated with suspension. If the Supplier believes that any suspension justifies modification of the Contract Price, then it shall notify ABB who will consider the request and in its discretion issue an amendment to the Purchase Order. ABB may at any time instruct the Supplier to recommence supply.
- 4.3. Either party will not be liable to the other for any delay in or failure to perform its obligations as a result of an event of Force Majeure. The Supplier shall notify ABB immediately upon learning of an event of Force Majeure which may result in any delay. The parties shall take all reasonable measures to mitigate the effects of any such delay or failure, including suspension of the works by ABB as provided herein. If such delay or failure continues for ninety (90) days, ABB shall be entitled to terminate the Contract by notice in writing, in which event neither party shall have any claim against the other in respect of such delay or failure.

5. DELAYS IN COMPLETION

If the Supplier fails to complete the Contract by the Completion Date or such extended date as may be granted by ABB, ABB shall be entitled to deduct as liquidated damages for delay as stated in the Purchase Order, or if not stated, one and a half per cent (1.5%) of the total Contract Price for every week's delay up to a maximum of fifteen (15%) of the total Contract Price. If such failure continues, or is likely to continue, for more than (10) ten weeks from the Completion Date and ABB having notified the Supplier and notified a final delivery date, the Supplier is still unable to comply therewith then, ABB shall have the right to terminate the Contract by notice in writing, and to claim any extra costs directly or indirectly incurred in acquiring suitable replacement equipment for the Equipment, or having the Services carried out.

6. PATENTS, DESIGNS AND COPYRIGHT

- 6.1. The Supplier warrants that neither the sale, nor the use of the Equipment, nor the performance of the obligations under this Contract, will infringe any Intellectual Property Rights.

ABB LIMITED GENERAL CONDITIONS OF PURCHASE

6.2. The Intellectual Property Rights in all plans, drawings, designs, specifications and all other documents provided by the Supplier (which shall not include any such documents provided to the Supplier by ABB) shall remain with the Supplier. The Supplier shall provide to ABB an irrevocable worldwide royalty-free perpetual licence to use copies of such documents which are provided to ABB under the Contract for use in the operation, maintenance and repair of the Equipment and Services and the design of other works necessary for operation in association with the Equipment and Services. ABB is licensed to make further copies of such documents and to use the information contained therein for such purposes.

6.3. Unless agreed otherwise in writing by authorised representatives of both parties, notwithstanding clause 6.2, in the event the Purchase Order requires the purchase of any software then,

- i. all Intellectual Property Rights created and/or owned by the Supplier prior to the date of this Contract in relation to the Equipment or Services shall remain the exclusive property of the Supplier;
- ii. the Supplier shall license such Intellectual Property Rights to ABB on an irrevocable worldwide royalty-free perpetual basis to the extent necessary to enable ABB to use, sell, develop, exploit (both commercially and otherwise), operate, maintain, repair or otherwise supply and deal in the Equipment or the Services (including any modification, alteration or extension of the same); and
- iii. all Intellectual Property Rights created and/or developed during the course of this Contract and/or in connection with the Equipment or Services shall be owned exclusively by ABB. The Supplier agrees to assign to ABB on demand these Intellectual Property Rights at no cost to ABB.

7. SUBCONTRACTING AND ASSIGNMENT

7.1. The Supplier shall not subcontract the Contract or any part thereof without the prior written approval of ABB, which approval shall not be unreasonably withheld or delayed. Approval to subcontract shall not relieve the Supplier from any of its obligations under the Contract, or impose any liability upon ABB to a sub-supplier. Any failure to perform by a sub-supplier of the Supplier shall not constitute an event of Force Majeure.

7.2. The Supplier shall not assign or transfer the Contract without the prior written approval of ABB, which approval shall be at ABB's absolute discretion.

8. LIABILITIES, INDEMNITIES AND INSURANCE

8.1. The Supplier shall fully indemnify ABB against any and all losses, claims, proceedings, costs, expenses (including legal costs) damages or other liabilities whatsoever resulting from:

- i. any personal injury (including death) to any person;
 - ii. any loss of or damage to any property;
 - iii. the performance or non-performance of the Contract;
 - iv. any breach of any legal and regulatory requirement in connection with the Contract;
 - v. any breach of confidentiality;
 - vi. any breach of bribery and corruption laws;
 - vii. any infringement or misappropriation of Intellectual Property Rights under clause 6.1; and/or
 - viii. any third party claim in tort or otherwise;
- to the extent that the same arises out of the act, omission, default or negligence of the Supplier, his agents or sub-suppliers.

8.2. The Supplier must hold and keep current, the following insurance policies and in the amounts stated below:

- i. Employer's liability insurance, fully compliant with any legislation applicable to the performance of this Contract; and
- ii. Public and Products liability insurance with a minimum liability of not less than five million GBP (£5,000,000.00), for any one event.

The Supplier will, when requested by ABB, provide to ABB a copy of the insurance policies required by the Contract, together with evidence of payment of the premiums for such insurance.

8.3. To the maximum extent permitted at law, and notwithstanding anything contained in this Contract to the contrary, ABB shall not be liable to the Supplier for any special, economic or consequential damages or losses, in each case whether direct or indirect, whether arising in contract, tort, negligence, warranty or otherwise, including but not limited to loss of revenue, loss of contracts or loss of profit.

8.4. To the maximum extent permitted at law, and notwithstanding anything contained in this Contract to the contrary, ABB's total liability to the Supplier, whether arising in contract, tort, negligence, warranty or otherwise, shall not exceed the Contract Price (including any agreed amendment thereto).

9. TERMS OF PAYMENT

9.1. The Contract Price is firm and shall include all applicable taxes, customs, fees, duties and delivery, in accordance with INCOTERMS as stated on the Purchase Order or if not stated, in accordance with clause 3.2, but shall exclude VAT which, if applicable, shall be added at the prevailing rate to any payment. The Contract Price shall become due for invoicing when the Equipment or Services

are accepted by ABB in accordance with the Contract. Unless agreed otherwise in writing, payment will be made within sixty (60) days of receipt by ABB of a valid invoice from the Supplier.

9.2. Payment against invoice or use of the Equipment or Services shall not be deemed of themselves to constitute acceptance by ABB, nor relieve the Supplier from liability in respect of any obligations under the Contract.

9.3. No additional sums shall be payable in respect of variations to the Contract, unless to the extent that the same are the subject of a Purchase Order amendment confirmed in writing by an authorised representative of ABB.

9.4. If ABB fails to make payment in accordance with this Contract, the Supplier shall be entitled to simple interest calculated at the rate of two per cent (2%) per annum above the base lending rate of the Bank of England for the period until the relevant payment is made. It is agreed that this shall constitute a substantial remedy for the purposes of Section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.

9.5. Without prejudice to any other right or remedy, ABB will be entitled to set-off any amount due from the Supplier, against any sums payable to the Supplier or recover any such amount as a debt.

10. OWNERSHIP AND RISK

10.1. All risk in the Equipment or Services will remain with the Supplier until delivery to, or acceptance by, ABB in accordance with the Contract, whichever is later. Without prejudice to ABB's obligations for payment, property in the Equipment or Services shall pass to ABB upon the earlier of allocation to the Contract, delivery, performance, or payment of any part of the Contract Price.

10.2. All tools, materials, drawings, specifications and other data or information provided by ABB, shall remain at all times ABB's property, and ABB reserves the right of access to collect the same from the Supplier during normal working hours of business, and the Supplier will return this property to ABB undamaged on completion of the Services or delivery of the Equipment.

11. WARRANTY

11.1. The Supplier shall promptly rectify at its own expense, and to ABB's satisfaction, any defect in or damage to the Equipment or Services or to any portion thereof, which may become apparent during a period of twelve months after the Equipment or Services is put into commercial operation or twenty-four months from date of delivery / completion, whichever is the later (hereinafter referred to as "the Warranty Period"), which results from:

- i. defective materials, workmanship or design (other than a design furnished or specified by ABB and for which the Supplier has disclaimed responsibility in writing within a reasonable time after receipt of ABB's instructions);
- ii. any act or omission of the Supplier during the Warranty Period; or
- iii. any defect within the meaning of Section 3(1) of the Consumer Protection Act 1987 or any statutory modification or re-enactment thereof.

11.2. The Supplier shall indemnify ABB in respect of all losses, costs and expenses incurred by ABB in remedying any defect in the Equipment or Services, and for any extra costs and expenses either incurred by ABB, or claimed by a third party against ABB (whether in contract, tort (including negligence), warranty, strict liability or otherwise), by reason of the supply of such defective Equipment or Services, including (without limitation) all costs associated with the identification, removal and reinstallation of defective Equipment or Services, and the loss of beneficial use of any works or installation of which they form part.

12. BOND OR GUARANTEE

If so stated in the Purchase Order, the Supplier shall provide on execution of the Contract, and maintain throughout its operation, a performance bond with a surety in a form approved by ABB in the sum stated in the Purchase Order, or a parent company guarantee in a form approved by ABB. In such case, the provision and maintenance of such bond or guarantee will be a condition precedent to any payment or any further payment by ABB to the Supplier, notwithstanding any provisions to the contrary in this Contract.

13. CONFIDENTIALITY

The Supplier will keep all information communicated to the Supplier in connection with the Contract, or otherwise concerning ABB's business, secret and confidential, and will not use the same except for the purposes of performing the Contract.

14. TERMINATION

14.1. ABB reserves the right to terminate the Contract, in whole or in part, by written notice to the Supplier, if the Supplier: (i) fails to comply with any of its material obligations under the Contract; or (ii) becomes insolvent, or makes an arrangement with its creditors, or has a receiver or administrative receiver appointed, or commences liquidation.

ABB LIMITED GENERAL CONDITIONS OF PURCHASE

14.2. If ABB terminates the Contract under clause 5, clause 14.1 or clause 21.3, then:

- i. ABB may immediately draw upon any performance bond or parent company guarantee issued in its favour by the Supplier;
- ii. ABB shall as soon as practicable after termination, value the Equipment provided by the Supplier up to the date of termination, and deduct therefrom any additional costs incurred by ABB in procuring the Equipment from another supplier; and
- iii. the Supplier shall indemnify ABB in respect of all losses, costs and expenses incurred by ABB as a result of termination, and ABB shall be entitled to deduct such amounts from any payment due to the Supplier from ABB, or recover such from the Supplier as a debt.

14.3. If ABB terminates the Contract, then all tools, materials, drawings, specifications and other data or information provided by ABB shall be returned to ABB together with any Equipment (whether complete or otherwise) as may still be required by ABB following termination. All such items shall be suitably packed for return or delivery in accordance with ABB's instructions, or if not so returned, ABB may enter the Supplier's premises to recover the same.

14.4. ABB may terminate the Contract for convenience, subject to providing written notice to the Supplier. Thereafter, ABB shall pay to the Supplier, in accordance with the terms of payment stated herein, the relevant amounts due for all Equipment satisfactorily delivered, or Services completed, up to the date of such termination, and any costs of materials or other goods ordered for which the Supplier is legally liable to accept delivery. Such items shall become the property of ABB when paid for and the Supplier shall place the items at ABB's disposal. The Supplier shall use its best efforts to mitigate costs associated with such termination.

15. SEVERANCE AND INVALIDITY

If any term or provision in this Contract shall, in whole or part, be held to any extent to be invalid, illegal or unenforceable under any enactment or rule of law, that term or provision or part shall to that extent be deemed not to form part of this Contract, and the enforceability of the remainder of this Contract shall not be affected. If any provision proves to be invalid, illegal or unenforceable, the parties shall replace the invalid, illegal or unenforceable provision by a valid new one having an effect as close as possible to the invalid, illegal or unenforceable provision.

16. ENTIRE AGREEMENT

16.1. This Contract and any associated Purchase Order issued by ABB constitutes the entire agreement between the parties for the Equipment or Services, and supersedes all representations or agreements relating thereto prior to the date of issue of the relevant Purchase Order, provided always that nothing in this Contract excludes liability for fraud or fraudulent misrepresentation.

16.2. The terms and conditions of the Contract do not derogate any of ABB's statutory or common law rights, and are in addition to those rights and not in substitution for them.

16.3. Any alteration to this Contract must be confirmed in writing by an authorised representative of ABB in the form of a Purchase Order in order to be effective. In the event of any inconsistency between these General Conditions and any Special Conditions, the latter shall prevail. In the event of any conflict or ambiguity between any other documents forming part of the Contract the Supplier shall refer the conflict to ABB as soon as it becomes apparent. ABB shall decide within five (5) working days which provision shall prevail at no cost to ABB or delay to the Completion Date.

16.4. The Supplier agrees that the Supplier's standard terms of business will not apply to the supply of the Equipment or Services under the Contract. Signing and returning any order acknowledgement form to the Supplier shall not be deemed to constitute agreement by ABB to alternative terms or conditions.

17. WAIVER

Any failure or delay by any party to exercise a right, power or remedy will not operate as a waiver of such, nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

18. NOTICES

Any notice to be given under the Contract by either party shall be in writing, and sent by either post or electronic mail to the other party at the address provided under this Contract, or such other address as may be specified by the parties by notice to the other. In proving service it shall be sufficient to show that the envelope containing the notice was properly addressed and posted, or that the transmission was duly despatched and acknowledged as the case may be.

19. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

This Contract is not made for the benefit of, nor shall any of its provisions be enforceable by, any person other than the parties to this Contract and their respective successors and permitted assignees.

20. RELATIONSHIP

20.1. Nothing in this Contract shall be deemed to constitute either party as a partner, agent, joint venturer or employee of or with the other party. Each party is an independent entity retaining complete control over and complete responsibility for its own operations and employees. Neither party shall have the right or authority to assume or create any obligations or commitments on the other party's behalf.

20.2. Nothing in the Contract shall be construed as establishing the Supplier, or any employee of the Supplier, as an employee of ABB. The Supplier shall therefore be responsible for all Income Tax liabilities and National Insurance payments due in respect of all fees and payments received under the Contract. The Supplier shall indemnify ABB in respect of any claims that may be made against ABB by relevant authorities in respect of Income Tax or National Insurance contributions relating to the Services.

20.3. If Services are to be provided, and in the event that a transfer of the Services or any part thereof to any new service provider (the "Service Provider") or to ABB, is a transfer to which Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") applies then:

- i. if the Supplier's personnel (or any of them) transfer to the employment of ABB or the Service Provider as a result of the application of TUPE, the Supplier shall indemnify ABB or the Service Provider against any liabilities, costs (including legal costs), losses, damages, penalties, orders, awards, expenses or other payments incurred by reason of any claim made by any of the Supplier's personnel against ABB, or any Service Provider, arising out of any act, fault or omission of the Supplier (including, without limitation, termination of employment and the obligation to inform and consult under TUPE) prior to any such transfer or arising under TUPE; and
- ii. in any event in such circumstances ABB and the Service Provider shall be entitled to terminate the employment of any of the Supplier's personnel who transfer to them as a result of the application of TUPE upon becoming aware of such transfer, and the Supplier shall indemnify ABB and the Service Provider in respect of any liabilities, costs (including legal costs), losses, damages, penalties, orders, awards, expenses or other payments arising from any claim that the Supplier's personnel may bring against ABB or the Service Provider as a result of such termination of employment including, without limitation, any claim for unfair dismissal or wrongful dismissal.

21. BRIBERY AND CORRUPTION

21.1. The Supplier hereby warrants that it will not, directly or indirectly, and it has no knowledge that other persons will, directly or indirectly, make any payment, gift or other commitment to its customers, to government officials or to agents, directors and employees of ABB or any other party in a manner contrary to applicable laws, and shall comply with all relevant laws, regulations, ordinances and rules regarding bribery and corruption.

21.2. Nothing in this Contract shall render ABB liable to reimburse the Supplier for any such consideration given or promised.

21.3. The Supplier's breach of any of the obligations contained in this Clause may be considered by ABB to be a material breach of this Contract and shall entitle ABB to terminate this Contract with immediate effect and without prejudice to any further right or remedies on the part of ABB under this Contract or applicable law.

21.4. The Supplier shall acquaint itself and comply with ABB's Supplier Code of Conduct as displayed on ABB's website (<http://www.abb.com>) as may be updated or modified from time to time. The Supplier agrees to perform its contractual obligations under this Contract with substantially similar standards of ethical behaviour.

22. DISPUTE RESOLUTION

22.1. If any dispute or difference arises in relation to any matter under the Contract, it may be referred by either party to senior management of the Supplier and ABB, who will meet to discuss the matter within fourteen (14) days of the date of its referral (or as soon as reasonably practicable) with a view to resolving the relevant dispute or difference.

22.2. In the event that no settlement is reached under clause 22.1 and if the Contract is a "construction contract" as defined in Section 104 of the Housing Grants, Construction and Regeneration Act 1996, then either party may refer any dispute or difference arising in relation to any matter under the Contract for adjudication, in which case the adjudication provisions of the TeCSA

ABB LIMITED GENERAL CONDITIONS OF PURCHASE

Adjudication Rules (as amended from time to time) shall apply and are hereby deemed incorporated by reference into the Contract.

- 22.3. In the event that no settlement is reached under clause 22.1 and the Contract is not a “construction contract” as defined in clause 22.2, then either party may refer any dispute or difference arising in relation to any matter under the Contract for alternative dispute resolution (“ADR”) procedure as may be agreed between the parties. The costs and fees associated with such ADR procedure shall be paid equally by the parties. In the event that the parties cannot resolve the said dispute or difference or agree on a suitable ADR procedure within six (6) weeks of the original notification of the matter, or if the said dispute or difference cannot be resolved by the ADR procedure, then such dispute or difference shall be referred to one or more arbitrators under the Rules of Conciliation and Arbitration of the International Chamber of Commerce. The place of arbitration shall be in Manchester, the language of the arbitration proceedings shall be English, and the arbitration award shall be final and binding on the parties.

23. LAW AND REGULATIONS

- 23.1. The Contract shall in all respects be construed and operate in accordance with English law and is subject to the exclusive jurisdiction of the English courts.
- 23.2. References to any legislation in this Contract shall include any modification or re-enactment of that legislation or any legislation substituted therefore and all legislation, orders, regulations and statutory instruments issued under that legislation.
- 23.3. Any provisions which by their nature are intended to survive the termination, completion or expiration of this Contract shall continue as valid and enforceable obligations of the parties, notwithstanding any such termination, completion or expiration.