

# ABB GENERAL TERMS AND CONDITIONS

## FOR PURCHASE OF GOODS AND/OR SERVICES (2016-1 GERMANY)

### 1. DEFINITIONS AND INTERPRETATION

1.1 The following terms have the following meanings:

**ABB GTC:** these ABB General Terms and Conditions for Purchase of Goods and/or Services (2016-1 Germany);

**Affiliate:** any entity, whether incorporated or not, which presently or in the future, directly or indirectly owns, is owned by, or is under common ownership with a Party, by virtue of a controlling interest of 50 % or more of the voting rights or the capital;

**Contract:** a written agreement and/or the Order for the purchase of Goods and/or Services by Customer from Supplier, including any other documents submitted by Customer to form part thereof, such as but without limitation to any specifications;

**Customer:** the party ordering Goods and/or Services from Supplier;

**Customer Data:** any data or information, including data relating to an identified or identifiable natural person, acquired by Supplier in preparation of or during the fulfilment of the Contract, irrespective of whether such data or information relates to Customer, its Affiliates or their respective customers or suppliers;

**Delivery:** delivery of Goods by Supplier in accordance with Clause 5.1;

**Embedded Software:** software necessary for operation of Goods, and embedded in and delivered as integral part of Goods;

**Goods:** the items to be delivered by Supplier in accordance with the Contract and/or all materials, documents, or items which are the result of Services provided by Supplier under the Contract in any form or media, including but without limitation to data, diagrams, drawings, reports and specifications;

**Intellectual Property (Rights):** (a) patents, utility models, copyrights, database rights and rights in trademarks, trade names, designs, knowhow, and invention disclosures (whether registered or unregistered); (b) applications, reissues, confirmations, renewals, extensions, divisions or continuations for any of these rights; and (c) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;

**Order:** Customer's order issued to Supplier for the purchase of Goods and/or Services;

**Party:** Customer or Supplier;

**Services:** the services to be provided by Supplier in accordance with the Contract;

**Subcontractor:** subcontractor and/or sub-supplier;

**Supplier:** the party providing the Goods and/or Services to Customer;

**Variation Order:** Customer's written instruction of a change to the Order or Contract such as to alter, to amend, to omit, to add to, or otherwise to change the Order, Contract or any parts thereof.

1.2 References to clauses are references to clauses of the ABB GTC.

1.3 Headings are for convenience only and do not affect the interpretation of the ABB GTC.

### 2. APPLICATION

2.1 The ABB GTC shall govern the Contract.

2.2 No terms or conditions delivered with or contained in Supplier's quotations, acknowledgements, acceptances, specifications or similar documents will form part of the Contract, and Supplier waives any right which it might have to rely on such terms or conditions, unless agreed to by Customer (which shall be in writing).

2.3 Supplier shall accept the Contract either expressly by written statement or impliedly by fulfilling the Order in whole or in part.

2.4 Any amendments to the Contract must be agreed in writing.

### 3. SUPPLIER'S RESPONSIBILITIES

3.1 Supplier shall deliver the Goods and provide the Services:

3.1.1 in accordance with the applicable laws and regulations;

3.1.2 in accordance with the Contract and all Customer instructions;

3.1.3 free from defects and from any rights of third parties; and

3.1.4 fit for any particular purpose specified in the Contract or, in absence thereof, fit for the purposes for which such Goods and/or Services would ordinarily be used.

3.2 Supplier shall ensure that the Goods are packed according to industry standards and in a manner adequate to preserve and protect the Goods.

3.3 Customer may issue Variation Orders to Supplier, and Supplier shall carry out such Variation Orders. If any Variation Order cause an increase or decrease in the cost of, or the time required for the performance of, any Services or Goods, an equitable adjustment shall be made in the purchase price or Delivery schedule, or both, in writing. If Supplier or Customer, as the case may be, believe that the variation has an impact on the cost, or the time required for the performance, of any such Services or Goods, it shall within twenty-eight (28) calendar days of the issuance of a Variation Order by Customer request the other party to agree (in writing) on such amendment(s) to the Contract; however, if no such agreement is achieved between Supplier and Customer within a reasonable period of time, Customer may instruct the performance of such Variation Order, and the Parties afterwards shall agree on the consequences (as provided hereinbefore), if any. Except as expressly provided hereinbefore, Supplier shall carry out a variation only upon receipt of a written Variation Order and continue to be bound by the provisions of the Contract.

3.4 Unless otherwise provided by applicable law or by the Contract, Supplier must not suspend or delay the Delivery of any Goods or the provision of any Services.

3.5 Supplier assumes full and exclusive responsibility for any occupational accident or disease occurred to its employees and its Subcontractors in relation to the provision of the Goods and/or Services.

3.6 Supplier is solely and exclusively responsible for any claims and/or lawsuits filed by its employees and/or Subcontractors in connection with the performance of the Contract, and – unless caused by Customer's gross negligence or intentional act – shall, without any limitations, defend, indemnify and hold Customer harmless from and against any claim, proceeding, action, fine, loss, cost, damages and expenses arising out of or relating to any such claims and/or lawsuits, and any noncompliance with legislation, regulations, codes of practice, guidance and other requirements of any relevant government or governmental agency applicable to Supplier, its employees or Subcontractors. Supplier undertakes to appear in court at its own cost if requested by Customer, acknowledging its status as sole and exclusive employer, and to provide Customer with all requested documentation and information necessary to ensure proper legal defence of Customer in court. The preceding sentence shall not apply if the liability or damage was caused by Customer's gross negligence or intentional act.

3.7 Customer is authorized to make any payments due to Supplier's employees and Subcontractors performing Services, or providing Goods under the Contract, in order to avoid lawsuits, liens or encumbrances. Such payments may be made through withholding Supplier's

credits, offsetting or in any other way. Supplier shall provide any support requested by Customer with regard to such payments and indemnify Customer for any payments made.

#### 4. PAYMENT, INVOICING

4.1 In consideration of the Goods delivered and/or the Services provided by Supplier in accordance with the Contract, Customer shall pay to Supplier the purchase price stated in the Contract provided the invoice fulfils the requirements defined in the Contract.

4.2 Supplier shall submit invoices in an auditable form, complying with applicable laws, generally accepted accounting principles and the specific Customer requirements, containing the following minimum information: Supplier name, address and reference person including contact details; invoice date; invoice number; Order number and Supplier number; address of Customer; quantity; specification of Goods and/or Services; price (total amount invoiced); currency; tax or VAT amount; tax or VAT number; Authorized Economic Operator and/or Approved Exporter Authorization number and/or other customs identification number, if applicable; payment terms as agreed.

4.3 Invoices must be sent to the billing address specified in the Contract.

4.4 Customer will reimburse expenses only at cost and to the extent agreed in writing.

4.5 Services charged on the basis of hourly rates require written confirmation of Supplier's time sheets by Customer. Supplier shall submit such time sheets to Customer for confirmation as may be instructed by Customer but latest together with any related invoice. Confirmation of time sheets cannot be construed as acknowledgement of any claims. Customer is not obliged to pay invoices based on time sheets which are not confirmed by Customer in writing.

4.6 Customer reserves the right to set off or withhold payment for Goods and/or Services not provided in accordance with the Contract.

4.7 Supplier shall neither employ for the performance of the Contract any person who does not have the aliens' labor permit required, nor employ any Subcontractor or any hiring company for temporary workers ("*Verleiher von Leiharbeitnehmern*") without prior written approval by Customer. Supplier shall obtain from any of its direct or indirect Subcontractors and from any hiring company in the contractual chain of companies (hereinafter collectively, but excluding Supplier: "*Employed Third Parties*") a written commitment in line with the requirements in Clauses 4.7 and 4.8 (including, but not limited to, the obligation to impose the obligations on the additional Employed Third Parties) prior to the start of their performance under the Contract.

4.8 The following provisions shall apply to the extent that the German legislation concerning the delegation of employees (*Arbeitnehmerentsendegesetz*), the German legislation concerning the compliance with labor agreements (*Tariftrüegesetz*) and/or the German legislation concerning the payment of minimum wages (*Mindestlohngesetz*) is/are applicable (all hereinafter together: the "*Special Labor Laws*"): (i) Supplier undertakes to comply with the Special Labor Laws and to procure compliance therewith by Employed Third Parties; (ii) Supplier shall indemnify and hold Customer harmless from and against any liability or obligation of Customer towards third parties for Supplier's or Employed Third Parties' breach of any of the Special Labor Laws, including without limitation any administrative fines, fees and cost, save as where Customer has acted intentionally; (iii) in case of Supplier's or Employed Third Parties' non-compliance with any Special Labor Laws, Customer shall be entitled to rescind the Contract or to terminate the Contract with immediate effect; and (iv) in case Customer reasonably suspects that Supplier or any Employed Third Party has breached any Special Labor Laws, Supplier shall prove by appropriate means compliance with such laws. "Appropriate means" shall include without limitation: inspection of payrolls on wages and salaries or time accounts (in pseudonymized form) or submission of comparably meaningful documents evidencing compliance with the Special Labor Laws.

#### 5. DELIVERY, PERFORMANCE OF SERVICES

5.1 Unless agreed otherwise in the Contract, the Goods shall be delivered in accordance with INCOTERMS 2010 FCA, to the place defined in the Contract or, if no such place has been defined, to Customer's place of business.

5.2 The Services shall be provided at the place specified in the Contract or, if no such place has been specified, at Customer's place of business.

5.3 Supplier shall provide no later than at the time of acceptance of the Contract the following minimum information: number of packages and contents, the customs tariff numbers of the country of consignment, and the countries of origin for all Goods; EU supplier's declaration or other documents for proof of preferential origin, if a free trade agreement or a GSP preferential regulation by the EU in favour of Supplier's country can be used. For controlled Goods, the relevant national export control numbers must be indicated and, if the Goods and/or Services are subject to U.S. export regulations, the U.S. Export Control Classification Numbers (ECCN) or classification numbers of the International Traffic in Arms Regulations (ITAR) must be specified. EU supplier's declaration or other documents for proof of preferential origin as well as conformity declarations and marks of the country of consignment or destination are to be submitted without being requested; certificates of origin upon request. Supplier shall state the Order number on all invoices (in particular but not limited to commercial, pro forma or customs invoices). Supplier shall not deploy nor subcontract persons or Subcontractors which are listed in actual sanction lists of following regulations:

- (EG) No. 2580/2001 Terrorism;
- (EG) No. 881/2002 Al-Qaida;
- (EU) No. 753/2011 Afghanistan;
- Embargo Regulations of EU.

5.4 The Goods shall be delivered, and Services shall be provided, during Customer's business hours unless otherwise requested, or agreed to, by Customer.

5.5 Upon Delivery, Supplier (or its appointed carrier) shall provide Customer a delivery note and any other required export and import documents mentioned in Clause 5.3 which do not have to be provided already at the time of acceptance of the Contract. If Customer has approved partial delivery or where Supplier intends to have a partial Delivery and such partial Delivery reasonably should be accepted by Customer, such delivery note shall also include the outstanding balance.

5.6 Ownership of the Goods passes to Customer at Delivery. To the extent that the Goods contain Embedded Software, ownership of such Embedded Software will not pass to Customer, but Supplier shall grant, or – as applicable – shall procure that the third party owner grants, Customer and all users a worldwide, irrevocable, perpetual, transferable, non-exclusive, royalty-free right to use the Embedded Software as integral part of such Goods and/or for servicing either of them.

#### 6. ACCEPTANCE

6.1 Any obligation or duty of Customer to inspect the Goods shall be limited to the inspection without undue delay whether such Goods meet the ordered quantity and type and whether externally visible defects or damages resulting from transport exist. In case as per applicable law Customer is obliged, or is under the duty, to inform Supplier of defects, Customer shall be entitled to do so (i) in case of latent defects within two weeks and (ii) in case of other defects within one week, upon the time of detection of the defect by Customer. The preceding provision shall apply accordingly in view of Services. The provisions of Clause 6.1 shall not affect any applicable provision exempting Customer to a broader extent from such obligations or duties.

6.2 The Services shall require acceptance by Customer. The Parties may agree also for other cases on a certain acceptance procedure, in which case acceptance will be subject to Customer's written acceptance statement. Supplier shall inform Customer in writing within a reasonable time period in advance when the Goods and/or Services are ready for acceptance.

6.3 Customer may enforce any remedy defined in the Contract for any rejected Goods or Services.

## 7. DELAY

If Supplier fails to deliver the Goods or to provide the Services in accordance with the agreed date(s), Customer may:

7.1 terminate or rescind the Contract in whole or in part with Clauses 8.4.5 through 8.7 being applicable;

7.2 refuse to accept any subsequent delivery of the Goods or provision of the Services;

7.3 recover from Supplier any expenses reasonably incurred by Customer in obtaining the Goods and/or Services in substitution from another supplier;

7.4 claim (in addition to the penalty under Clause 7.5, if any) for any (exceeding) additional costs, losses or damages incurred whatsoever by Customer which are reasonably attributable to Supplier's failure to comply with the agreed date(s); and/or

7.5 claim the penalty for Supplier's default with the date(s) as agreed in the Contract. The penalty shall be payable at a rate specified in the Contract. Supplier shall pay the penalty upon written demand or upon receipt of an invoice from Customer. The agreed penalty shall not affect Customer's claim for damages whatsoever nor shall the payment of such penalty relieve Supplier from any of its obligations and liabilities under the Contract. Customer shall be entitled to reserve the right to assert the penalty up to the time of final payment.

However, in case the applicable law requests Customer prior to enforcement of such remedies to grant a grace period to Supplier, the rights and claims as per Clauses 7.1 and 7.2 shall only apply after Customer has set such grace period to Supplier and Supplier has not delivered or performed, as the case may be, within such period.

## 8. WARRANTY AND REMEDIES

8.1 Supplier warrants that the Goods and/or Services comply with the Contract, including but without limitation to Supplier's responsibilities as defined in Clause 3.1.

8.2 Supplier warrants that the Goods are new and unused at the date of Delivery and remain free from defects during the warranty period.

8.3 The warranty period is twenty four (24) months from Delivery and in case of Services: from complete performance thereof.

8.4 In case of breach of any warranty which is not remedied within forty eight (48) hours from Customer's notification or such longer or shorter period reasonably to be granted by Customer in view of the circumstances involved, or in other cases where the applicable law waives the requirement to set a time period (grace period) for remedy, Customer is entitled to enforce any or more of the following remedies at its discretion and at Supplier's expense:

8.4.1 to give Supplier another opportunity to carry out any additional work necessary to ensure that the Contract is fulfilled, and/or to obtain prompt repair or replacement of the defective Goods and/or Services;

8.4.2 to carry out (or to instruct a third party to carry out) any additional work necessary to make the Goods and/or Services comply with the Contract;

8.4.3 to refuse any further Goods and/or Services;

8.4.4 to claim such damages as may have been sustained by Customer as a result of Supplier's breach of the Contract;

8.4.5 to terminate or rescind the Contract; in such event of termination Customer has no obligation to compensate or further pay Supplier, and, in such event of rescission, Supplier shall pay back to Customer any remuneration received from Customer for the Goods and/or Services and take back the Goods at Supplier's own cost and risk.

8.5 The remedies as per Clauses 8.4 shall be at Supplier's own expense (including, without limitation, costs of transportation, disassembly) and risk.

8.6 In case of a breach of any warranty, the warranty period shall be extended by a time period which is equal to the time period for the

performance of the remedial work by Supplier. For all other parts of the Goods or Services which cannot be used for the intended purpose as a result of a defect or damage, the same warranty extension shall apply. Any other provisions leading to an extension, starting anew or halt of the warranty period shall remain unaffected.

8.7 The rights and remedies available to Customer under the Contract are cumulative and are not exclusive of any rights or remedies available in view of defects whatsoever.

## 9. INTELLECTUAL PROPERTY

9.1 Without prejudice to Clause 9.2, Supplier hereby grants Customer, or undertakes to procure that Customer is granted, a worldwide, irrevocable, transferable, non-exclusive, royalty-free license to use the Intellectual Property Rights in the Goods, including Embedded Software, if any, or other software to be provided to under the Contract, if any.

9.2 Supplier herewith assigns to Customer full ownership rights in any Intellectual Property in Goods resulting from the Services. Supplier further agrees, upon Customer's request and at its cost, to take all further steps necessary to perfect Customer's ownership to the Intellectual Property.

9.3 Intellectual Property Rights in any Goods created by or licensed to Supplier prior or outside a Contract (Pre-Existing IPR) will remain vested in Supplier (or the third party owner). To the extent that Pre-Existing IPR are embedded in any Goods resulting from the Services, Supplier grants, or undertakes to procure that the third party owner grants, Customer a worldwide, irrevocable, transferable, non-exclusive, royalty-free license to use the Pre-Existing IPR as part of such Goods, including the right to improve, develop, market, distribute, sublicense or otherwise use such Pre-Existing IPR.

9.4 Supplier must specify in writing and prior to Delivery all open source software contained in or used by Embedded Software, if any, and request Customer's written approval. Supplier agrees to replace at its own cost any open source software components rejected by Customer with software of at least the same quality and functionality. Supplier shall indemnify and hold Customer harmless from and against all third party claims in view of the use of open source software in the Goods or Services.

9.5 If any claim is made against Customer that Supplier's Goods and/or Services infringe a third party's Intellectual Property Rights, Supplier shall at its cost, but at Customer's discretion (i) procure for Customer and Customer's clients, as the case may be, the right to continue using the Goods and/or Services; (ii) modify the Goods and/or Services so they cease to be infringing; or (iii) replace the Goods and/or Services by non-infringing equivalents. Otherwise, Customer is entitled to terminate the Contract and to reclaim all sums which it has paid to Supplier thereunder.

## 10. COMPLIANCE, INTEGRITY

10.1 Supplier shall provide the Goods and/or Services in compliance with all relevant laws, regulations, and codes of practice.

10.2 Supplier and its Subcontractors must comply with the ABB Lists of Prohibited and Restricted Substances and with the reporting and other requirements regarding Conflict Minerals made available under [www.abb.com](http://www.abb.com) – **Supplying – Material Compliance** or otherwise and shall provide Customer with documents, certificates and statements as requested. Any statement made by Supplier to Customer (whether directly or indirectly) with regard to materials used for or in connection with the Goods and/or Services will be deemed to be a representation under the Contract.

10.3 Supplier represents and warrants that it is and will remain fully compliant with all applicable trade and customs laws, regulations, instructions, and policies, including, but not limited to, satisfying all necessary clearance requirements, proofs of origin, export and import licenses and exemptions from, and making all proper filings with appropriate governmental bodies and/or disclosures relating to the provision of services, the release or transfer of goods, hardware, software and technology.

10.4 No material or equipment included in or used for the Goods and/or Services must originate from any company or country listed in any relevant embargo issued by the authority in the country where the Goods and/or Services will be used or an authority otherwise having influence over the equipment and material forming part of the Goods and/or Services. If any of the Goods and/or Services are or will be subject to export restrictions, it is Supplier's responsibility to promptly inform Customer in writing of the particulars of such restrictions.

10.5 Both Parties warrant that each will not, directly or indirectly, and that each 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 each Party, or any other party in a manner contrary to applicable laws (including but not limited to the U. S. Foreign Corrupt Practices Act, the UK Bribery Act 2010 and, where applicable, legislation enacted by member states and signatories implementing the OECD Convention Combating Bribery of Foreign Officials), and shall comply with all relevant laws, regulations, ordinances and rules regarding bribery and corruption. Nothing in the Contract will render either Party or any of its Affiliates liable to reimburse the other for any such consideration given or promised.

10.6 Supplier herewith acknowledges and confirms that Supplier has received a copy of ABB's Code of Conduct and ABB's Supplier Code of Conduct or has been provided information on how to access both ABB Codes of Conduct online under [www.abb.com/Integrity](http://www.abb.com/Integrity). Supplier agrees to perform its contractual obligations in accordance with both ABB Codes of Conduct.

10.7 ABB has established reporting channels where Supplier and its employees may report suspected violations of applicable laws, policies or standards of conduct: Web portal: [www.abb.com/Integrity](http://www.abb.com/Integrity) – **Reporting Channels**; contact details specified on this Web portal.

10.8 Any violation of an obligation contained in this Clause 10 is a material breach of the Contract. Either Party's material breach shall entitle the other Party to terminate the Contract with immediate effect and without prejudice to any further rights or remedies available thereunder or at law. Notwithstanding anything to the contrary in the Contract, Supplier shall, without any limitations, indemnify and hold harmless Customer for all liabilities, damages, cost or expenses incurred as a result of any such violation and termination of the Contract, or arising from export restrictions concealed by Supplier.

## **11. CONFIDENTIALITY, DATA SECURITY, DATA PROTECTION**

11.1 Supplier shall keep in strict confidence all Customer Data. This shall apply whether such data are received before or after acceptance of the Contract. Supplier shall restrict disclosure of such confidential material to such of its employees, agents or Subcontractors or other third parties as need to know the same for the purpose of the provision of the Goods and/or Services to Customer. Supplier shall ensure that such employees, agents, Subcontractors or other third parties are subject to and comply with the same obligations of confidentiality as applicable to Supplier and will be liable for any unauthorized disclosures.

11.2 Supplier shall apply appropriate safeguards, adequate to the type of Customer Data to be protected, against the unauthorised access or disclosure of such data and protect such Customer Data in accordance with the generally accepted standards of protection in the related industry, or in the same manner and to the same degree that it protects its own confidential and proprietary information – whichever standard is higher. Supplier may disclose confidential information to Permitted Additional Recipients (which means Supplier's authorised representatives, including auditors, counsels, consultants and advisors) provided always that (i) such information is disclosed on a strict need-to-know basis, and (ii) such Permitted Additional Recipients sign with Supplier a confidentiality agreement with terms substantially similar hereto or,

where applicable, are required to comply with codes of professional conduct ensuring confidentiality of such information.

11.3 Supplier must not (i) use Customer Data for any other purposes than for providing the Goods and/or Services, or (ii) reproduce the Customer Data in whole or in part in any form except as may be required by the respective contractual documents, or (iii) disclose Customer Data to any third party, except to Permitted Additional Recipients or with the prior written consent of Customer.

11.4 Supplier shall install and update at its own cost required adequate virus protection software and operating system security patches for all computers and software utilized in connection with providing the Goods and/or Services.

11.5 Supplier shall inform Customer without undue delay about suspicion of breaches of data security or other serious incidents or irregularities regarding any Customer Data.

11.6 Supplier agrees that Customer is allowed to provide any information received from Supplier in particular to any Affiliate of Customer. Supplier shall obtain in advance all necessary approval or consent for Customer to provide such information to Customer's Affiliates if such information is confidential for any reason or subject to applicable data protection or privacy laws and regulations.

## **12. LIABILITY AND INDEMNITY**

12.1 Without prejudice to applicable mandatory law, Supplier shall, without any limitations, indemnify and hold harmless Customer for all liabilities, damages, cost, losses or expenses incurred by Customer as a result of Supplier's breach of the Contract, to the extent that the respective liabilities, damages, cost, losses or expenses were caused by or arise from culpable acts or omissions of Supplier, unless caused by Customer's gross negligence or intentional act. Supplier shall, without any limitations, indemnify and hold harmless Customer for any claim made by a third party against Customer in connection with the Goods and/or Services, including but without limitation to claims that such Goods and/or Services infringe a third party's Intellectual Property Rights, due to Supplier's breach of the Contract. Upon Customer's request Supplier shall defend Customer against any such third party claims.

12.2 Supplier is responsible for the control and management of all of its employees and/or Subcontractors, and it is responsible for their acts or omissions as if they were the acts or omissions of Supplier.

12.3 Supplier shall maintain in force, and upon request provide evidence of, adequate liability insurance and statutory worker's compensation/employer's liability insurance with reputable and financially sound insurers, which however will not relieve Supplier from any liability towards Customer. The insured amount cannot be considered as limitation of liability.

12.4 Customer reserves the right to set off any claims under a Contract against any amounts owed to Supplier.

## **13. TERMINATION**

13.1 Customer may terminate the Contract for convenience in whole or in part by giving Supplier thirty (30) calendar days written notice. In such event Customer shall pay to Supplier the value of the delivered but unpaid Goods and/or Services and proven direct cost reasonably incurred by Supplier for the undelivered Goods and/or Services, however in no event more than the price for the Goods and/or Services agreed under the Contract. No further compensation will be due to Supplier.

13.2 In the event of Supplier's breach of the Contract, Customer is entitled to terminate or rescind the Contract with Clauses 8.4.5 through 8.7 being applicable.

13.3 Both Parties may terminate the Contract with immediate effect by notice in writing in the event that in view of the other Party (i) an interim order is applied for or made, or a voluntary arrangement approved, or a petition for a bankruptcy order is presented or a bankruptcy order is made or an application to open insolvency proceedings on its

assets is filed or being commenced or being disclaimed due to lack of mass; or (ii) any circumstances arise which entitle the court or a creditor to appoint a receiver or administrator or to make a winding-up order; or (iii) other similar action is taken against or the other Party by reason of its insolvency or in consequence of debt; or (iv) there is a change of control of Supplier.

13.4 Upon termination under Clause 13.1 through 13.3 the other Party shall immediately at its own expense return to the terminating Party its respective property (including any Customer Data or other data as per Clause 11.1, documentation, and transfer of Intellectual Property) then under the other Party's control and provide the terminating Customer with the complete documentation about the delivered Goods and/or Services.

#### **14. FORCE MAJEURE**

14.1 Neither Party will be liable for any delay or failure to perform its obligations under the Contract if the delay or failure results from an event of Force Majeure. Force Majeure means an event that was not foreseeable by the affected Party at the time of execution of the Contract, is unavoidable and outside the reasonable control of the affected Party, provided that it cannot overcome such event despite all reasonable efforts, and that it provides notice to the other Party within ten (10) calendar days from occurrence of the Force Majeure event or of the time Supplier becomes aware of such event or should reasonably be aware thereof, whichever occurs later.

14.2 If a Force Majeure event exceeds thirty (30) calendar days, either Party may terminate the Contract forthwith by written notice without liability. Each Party shall use reasonable efforts to minimise the effects of the Force Majeure event.

#### **15. ASSIGNMENT AND SUBCONTRACTING**

15.1 Supplier may neither assign, nor transfer, encumber nor subcontract the Contract, nor any parts thereof (including any monetary receivables from Customer) without prior written approval of Customer.

15.2 Customer may assign, transfer, encumber, subcontract or deal in any other manner with the Contract or parts thereof to its Affiliates.

#### **16. NOTICES**

Any notice must be given duly signed by registered mail, courier, fax or by e-mail to the address of the relevant Party as stated in the Contract or to such other address as such Party may have notified in writing. E-mail and fax require written confirmation of the receiving Party. Supplier's reply, correspondence, information or documentation related to the Contract must be provided in the language used in the Contract.

#### **17. WAIVERS**

Failure to enforce or exercise any term of the Contract does not constitute a waiver of such term and does not affect the right later to enforce such or any other term therein contained.

#### **18. GOVERNING LAW AND DISPUTE SETTLEMENT**

18.1 The Contract is governed by the laws of the country (and/or the state, as applicable) where Customer is registered, however under exclusion of its conflict of law rules and the United Nations Convention on International Sale of Goods.

18.2 If Customer and Supplier are registered in the same country, any dispute arising in connection with the Contract which cannot be settled amicably shall be submitted for resolution to the jurisdiction of the competent courts at Customer's place of registration.

18.3 If Customer and Supplier are registered in different countries, any dispute arising in connection with the Contract which cannot be settled amicably shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance therewith. Place of arbitration shall be Customer's place of registration. The language of the proceedings and of the award shall be English. The decision of the arbitrator is final and binding upon both Parties, and neither Party may appeal for revision.

#### **19. SEVERABILITY**

The invalidity or unenforceability of any term of the Contract will not adversely affect the validity or enforceability of the remaining terms. The Parties shall agree on valid and enforceable provisions which will come as near as possible to the economic effect of the invalid or unenforceable term.

#### **20. SURVIVAL**

20.1 Provisions of the Contract which either are expressed to survive its termination or from their nature or context it is contemplated that they are to survive such termination will remain in full force and effect notwithstanding such termination.

20.2 The obligations set forth in Clauses 8 (Warranty and Remedies), 9 (Intellectual Property), 11 (Confidentiality, Data Security, Data Protection) and 12 (Liability and Indemnity) exist for an indefinite period of time and survive expiration or termination of the Contract for any reason.

#### **21. ENTIRETY**

The Contract constitutes the entire agreement between the Parties and replaces any prior agreement between them with regard to its subject.

#### **22. RELATIONSHIP OF PARTIES**

22.1 The relationship of the Parties is that of independent parties dealing at arm's length and nothing in the Contract may be construed to constitute Supplier as an agent or employee of Customer or so as to have any kind of partnership with Customer, and Supplier must not represent itself as or act on behalf of Customer.

22.2 The Contract does not imply any employment relationship between Customer and Supplier, or between Customer and Supplier's employees assigned to the execution of the Contract. Customer remains free of any responsibility or liability for labour, social security or taxes with respect to Supplier and its employees assigned to the execution of the Contract.