

General conditions for the supply of machinery and spare parts (2020)

1. General

- 1.1. The contract shall be deemed to have been entered into upon receipt of the supplier's written acknowledgement stating acceptance of the order ("Order Acknowledgement"). Tenders which do not stipulate an acceptance period shall not be binding.
- 1.2. These general conditions of supply shall be binding if declared applicable in the tender or in the Order Acknowledgement. Any conditions stipulated by the customer which are in contradiction to these general conditions of supply shall only be valid if expressly acknowledged by the supplier in writing.
- 1.3. All agreements and legally relevant declarations of the contracting parties must be in writing in order to be valid. However, the contracting parties acknowledge electronic signature (e.g. Adobe Sign, DocuSign or similar which ensure identification of the issuer and the integrity of the document) applied by authorized persons, to be sufficient and binding for entering into the contract and for any documents related to the contract, including, without limitation, documents for which the contract requires written form or which require to be signed by the contracting parties.
- 1.4. Should a provision of these general conditions of supply prove to be invalid in full or in part, the contracting parties shall replace such provision by a new one that is as close as possible to the legal and economic effect of the invalid provision.

2. Scope of supplies and services

The supplies and services are exhaustively specified in the Order Acknowledgement and in appendices thereto, if any. The supplier shall be entitled to make any changes which lead to improvements provided such changes do not result in a price increase.

3. Plans and technical documents

- 3.1. Unless otherwise agreed, brochures and catalogues are not binding. Data in technical documents are only binding if they have been expressly stipulated as such.
- 3.2. Each party retains all rights to plans and technical documents provided to the other. The party receiving such documents recognises these rights and shall – without previous written consent of the other party – not make these documents available to any third party, either in whole or in part, nor use them for purposes other than those for which they were handed over.

4. Prices

- 4.1. Unless otherwise agreed, all prices shall be deemed to be net, ex works, excluding packing, in freely available Swiss francs without any deductions whatsoever.

Any and all additional charges, for example, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer.

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Likewise, the customer shall bear any and all taxes, fees, levies, customs duties and the like as well as the related administrative costs which are levied out of or in connection with the contract or its fulfilment. If such costs, taxes etc. are charged to the supplier or to persons employed or appointed by the supplier to perform any of his obligations, they shall be refunded by the customer upon presentation of the receipts.

- 4.2. The supplier reserves the right to adjust the prices in case the wage rates or the raw material prices vary between the submission of the tender and the contractually agreed performance. In such case the adjustment shall be made according to the attached price adjustment clause.

In addition, an appropriate price adjustment shall apply in case

- the delivery time has been subsequently extended due to any reason stated in Clause 7.2, or
- the nature or the scope of the agreed supplies or services has changed, or
- the material or the execution has undergone changes because any documents furnished by the customer were not in conformity with the actual circumstances, or were incomplete, or
- an amendment has been made to laws, regulations or the principles of interpretation or application.

5. Terms of payment

- 5.1. Payments shall be made by the customer at the supplier's domicile according to the agreed terms of payment, without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like.

Unless otherwise agreed, the price shall be paid in the following instalments:

- one third as advance payment within one month after receipt of the Order Acknowledgement by the customer,
- one third on expiry of two thirds of the agreed delivery time,
- the remainder within one month after supplier's advice that the supplies are ready for dispatch.

Payment will be deemed to be fulfilled when Swiss francs have been made freely available to the supplier at the supplier's domicile. If payment by bills of exchange or Letter of Credit is agreed, the customer shall pay the cost of discounting such bills, bill of exchange taxes and collection charges and the cost of opening, notifying and confirming the Letter of Credit.

- 5.2. If the customer exceeds the agreed periods of payment, it shall be liable, without reminder and with reservation of the right to bring further claims, for interest at a rate depending on the terms prevailing at ABB's domicile, but not less than 5 percent per annum. The contractual payment obligations remain in force.

6. Reservation of title

The supplier shall remain the owner of all supplies until he has received the full payments in accordance with the contract.

The customer shall cooperate in any measures necessary for the protection of the supplier's title. In particular, upon entering into the contract he authorises the supplier to enter or notify the reservation of title in the required form in public registers, books or similar records, all in accordance with the relevant national laws, and to fulfil all corresponding formalities, at the customer's expense.

During the period of the reservation of title, the customer shall, at his own cost, maintain the supplies and insure them for the benefit of the supplier against theft, breakdown, fire, water and other risks. He shall further take all measures to ensure that the supplier's title is in no way compromised or rescinded.

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7. Delivery time

- 7.1. The delivery time shall start as soon as the contract is entered into, all official formalities such as, but not limited to, import, export, transit and payment permits have been completed, payments due with the order have been made, any agreed securities given and the main technical points settled. The delivery time shall be deemed to be observed if by the time of expiration of the delivery time the supplier has sent a notice to the customer informing him that the supplies are ready for dispatch.
- 7.2. The delivery time shall be reasonably extended:
- a) if the information required by the supplier for the performance of the contract is not received in time, or if the customer subsequently changes it and is thereby causing a delay in the delivery of the supplies or services;
 - b) if hindrances occur which the supplier cannot prevent despite exercising the required care, regardless of whether they affect the supplier, the customer or a third party. Such hindrances include, but shall not be limited to, epidemics, pandemics, mobilisation, war, civil war, acts of terrorism, riots, political unrest, revolutions, sabotage, serious breakdown in the works, accidents, labour conflicts, late or deficient delivery by subcontractors of raw materials, semi-finished or finished products, the need to scrap important work pieces, actions or omissions by any authorities or state or supranational bodies, embargoes, unforeseeable transport problems, fire, explosion, natural catastrophes;
 - c) if the customer or a third party is behind schedule with work he has to execute, or with the performance of his contractual obligations, in particular if the customer fails to observe the terms of payment.
- 7.3. The customer is entitled to claim liquidated damages for delayed delivery insofar as it can be proved that the delay has been caused through the fault of the supplier and that the customer has suffered a loss as a result of such delay. If substitute material can be supplied to accommodate the customer, the latter is not entitled to any damages for delay.
- Liquidated damages for delayed delivery shall not exceed 0.5 percent for every full week's delay and shall in no case whatsoever altogether exceed 5 percent of the contract price of the part of the supplies in delay. No damages at all shall be due for the first two weeks of delay.
- After reaching the maximum liquidated damages for delayed delivery, the customer shall grant the supplier a reasonable extension of time in writing. If such an extension is not observed for reasons within the supplier's control, the customer shall have the right to reject the delayed part of the supplies. If a partial acceptance is economically not justified on the part of the customer, the latter shall be entitled to terminate the contract and to claim refund of the money already paid against return of the deliveries supplied.
- 7.4. In case a specific date is agreed instead of a delivery period, this date shall correspond to the last day of a delivery period; Clauses 7.1 to 7.3 apply by analogy.
- 7.5. Any delay of the supplies or services does not entitle the customer to any rights and claims other than those expressly stipulated in this Clause 7. This limitation does, however, not apply to unlawful intent or gross negligence on the part of the supplier, but does apply to persons employed or appointed by the supplier to perform any of his obligations.

8. Passing of benefit and risk

- 8.1. The benefit and the risk of the supplies shall pass to the customer by the date of their leaving the works at the latest.
- 8.2. If dispatch is delayed at the request of the customer or due to reasons beyond supplier's control, the risk of the supplies shall pass to the customer at the time originally foreseen for their leaving the works. From this moment on, the supplies shall be stored and insured on the account and at the risk of the customer.

9. Inspection and acceptance of the supplies and services

- 9.1. Insofar as it is normal practice, the supplier shall inspect the supplies and services before dispatch. If the customer requests further testing, this has to be specially agreed upon and paid for by the customer.
- 9.2. The customer shall inspect the supplies and services within a reasonable period of time and shall immediately notify the supplier in writing of any defects. If he fails to do so, the supplies and services shall be deemed to be accepted.
- 9.3. If the supplier has been notified of defects in accordance with Clause 9.2, he shall remedy them as soon as possible, and the customer shall give the supplier the possibility to do so.
- 9.4. The execution of an acceptance test as well as the stipulation of the conditions related thereto require a special agreement.
- 9.5. Defects of any kind in supplies or services shall not entitle the customer to any rights and claims other than those expressly stipulated in this Clause 9 and Clause 10 (warranty, liability for defects).

10. Warranty, liability for defects

10.1. Warranty period

The warranty period is 12 months, or 6 months in case of a multi-shift system. It starts when the supplies leave the works or, if the supplier undertakes the installation, upon completion thereof. If dispatch or installation are delayed due to reasons beyond supplier's control, the warranty period shall end not later than 18 months after supplier's notification that the supplies are ready for dispatch.

For replaced or repaired parts the warranty period starts anew and lasts 6 months from the replacement or completion of the repair, but not longer than the expiry of a period double the warranty period stipulated in the preceding paragraph.

The warranty expires prematurely if the customer or a third party undertakes modifications or repairs or if the customer, in case of a defect, does not immediately take all appropriate steps to mitigate the damage and give the supplier the possibility to remedy the defect.

10.2. Liability for defects in material, design and workmanship

Upon the written request of the customer, the supplier may choose to repair or replace as quickly as possible any parts of the supplies which, before the expiry of the warranty period, are proven to be defective or unusable due to bad material, faulty design or poor workmanship. Replaced parts shall become the supplier's property if he does not explicitly renounce this. Under restriction of proportionality, the supplier shall bear the costs of remedying the defective parts provided that they do not exceed the customary costs of transport, personnel, travelling, accommodation, dismantling and reassembly of the defective parts.

10.3. Liability for warranted qualities

The warranted qualities are only those which have been expressly specified as such in the Order Acknowledgment or in the specifications. Such warranties are valid until the expiry of the warranty period at the latest.

If the warranted qualities are not or only partially achieved, the customer may first of all require the supplier to remedial works immediately. The customer shall give the supplier the necessary time and possibility to do so.

If these remedial works fail completely or in part, the customer may claim a reasonable reduction of price. If, however, the defects are of such significance that they cannot be remedied within a reasonable time and provided that the supplies and services cannot be used for their specified purpose, or if such use is considerably impaired, then the customer shall be entitled to refuse acceptance of the defective part or, if partial acceptance is economically not justified for him and he communicates this immediately, to terminate the contract. In this case the supplier can only be held liable for reimbursing the sums which have been paid to him for the parts affected by the termination.

10.4. Exclusions from the liability for defects

All deficiencies which cannot be proven to have their origin in bad material, faulty design or poor workmanship, e.g. those resulting from normal wear, improper maintenance, failure to observe the operating instructions, excessive loading, use of any unsuitable material, influence of chemical or electrolytic action, building or installation work not undertaken by the supplier, or resulting from other reasons beyond supplier's control are excluded from the supplier's warranty and liability for defects.

10.5. Exclusivity of warranty claims

With respect to any defective material, design or workmanship as well as to any failure to fulfil warranted qualities, the customer shall not be entitled to any rights and claims other than those expressly stipulated in Clauses 10.1 to 10.4.

11. Export control

The customer recognises that the supplies may be subject to Swiss and/or foreign legal provisions and regulations on export control and are not allowed to be sold, leased or otherwise transferred or used for a purpose other than the agreed without an export or re-export permit of the competent authority. The customer undertakes to comply with such provisions and regulations. He is aware that these may change and that they apply to the contract in the current valid wording.

12. Data protection

12.1. The contracting parties agree that the customer shall be the data controller, who shall ensure compliance with the applicable data protection laws, in particular the lawfulness of the processing of personal data. The supplier shall be processing personal data on behalf of the customer and shall ensure compliance only with regard to those obligations under applicable data protection laws that are specifically directed to processors and shall act according to lawful instructions of the customer.

12.2. Supplier's personnel engaged in the processing of personal data are informed of the confidential nature of the personal data, have received appropriate training on their responsibilities and have executed written confidentiality agreements.

12.3. The customer agrees that it will not withhold or delay its consent to any changes to this data protection clause and/or to any additional data processing or data protection agreements which in the reasonable opinion of the supplier are required to be made in order to comply with applicable data protection laws and regulations and/or with guidelines from any competent supervisory authority, and their application to the supplies and services provided by the supplier from time to time.

13. Software

If the supplies and services delivered by the supplier include software, the customer is granted a non-exclusive right of use of the software together with the delivery item, unless otherwise agreed. The customer is not entitled to copy (except for archival purposes, troubleshooting or to replace faulty data carriers) or to edit the software. In particular, the customer may not disassemble, decompile, decrypt or reverse engineer the software without the prior written consent of the supplier. In case of infringement, the supplier may withdraw the right of use. For third-party software, the conditions of use of the licensor apply, and the licensor, as well as the supplier, may also assert a claim in the event of infringement.

14. Limitation of liability

All cases of breach of contract and the relevant legal consequences as well as all rights and claims on the part of the customer, irrespective on what ground they are based, are exhaustively covered by these general conditions of contract. In the event that claims of the customer in relation to or in connection with the contract or the breach thereof should exist, the total amount of such claims is limited to the price paid by the customer.

However, in particular, any claims not expressly mentioned for damages, reduction of price, termination of or withdrawal from the contract are excluded. In no case whatsoever shall the customer be entitled to claim for damages which do not occur in the delivery item itself, such as but not be limited to for loss of production, loss of use, loss of orders, recall costs, loss of profit and other direct or indirect or consequential damage. Liability is also excluded for compensation claims from third parties against the customer for infringements of intellectual property rights.

This exclusion of further liability on the supplier's part does not apply to unlawful intent or gross negligence on the part of the supplier, but does apply to persons employed or appointed by the supplier to perform any of his obligations.

This exclusion of liability does not apply as far as it is contrary to compulsory law.

15. Installation

If the supplier undertakes installation or supervision of the installation, the General Conditions of Installation of ABB are applicable to such installation.

16. Jurisdiction and applicable law

16.1. The place of jurisdiction for both the customer and the supplier shall be at the registered office of the supplier. The supplier shall, however, be entitled to sue the customer at the latter's registered address.

16.2. The contract shall be governed by Swiss substantive law. The United Nations Convention on the International Sale of Goods of April 11, 1980, shall not apply.

Appendix: Price Adjustment Formula

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Price Adjustment Formula

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$$P = P_0 \left(a + b \frac{L_m}{L_0} + c \frac{M_m}{M_0} \right)$$

P = _____ Selling price on date of delivery

P₀ = _____ Selling price by tender

a = _____ Coefficient of fixed part of co (e.g. = 0.1)¹

b = _____ Coefficient of part varying with wage index (e.g. = 0.6)¹

c = _____ Coefficient of part varying with material index (e.g. = 0.3)¹

L₀ = _____ Wage index² of Swissmem, Zürich, on date of tender

L_m = _____ Average of all wage indices²
- from date of Order Acknowledgement to completion in accordance with contract* or
- during period of manufacture, i.e. from _____ to _____*

M₀ = _____ Mean of price indices³ of principal material in category «metals and metal products» required for manufacture, related to their proportion of value of supplies on date of tender

M_m = _____ Average of mean values of all price indices³ of principal materials in category «metals and metal products» required for manufacture, related to their proportion of value of supplies at time of delivery
- from date of Order Acknowledgement to completion in accordance with contract * or
- from date of Order Acknowledgement to date by which supplier had obtained most of these materials i.e. from _____*

¹ a + b + c must always total 1.

² Since the wage index is only issued by Swissmem quarterly, the index for the past quarter shall be inserted in each case.

³ Fractions of the official producer price index calculated and published monthly. (If the year serving as a basis for de-termination of the index is changed by the authority concerned, the supplier is entitled to re-calculate the changes in prices in accordance with the new index values.)

* Delete where inapplicable.