

# ABB Terms & Conditions

## ABB ADDENDUM TO ORGALIME S 2000

### 1 GENERAL

- 1.1 Whenever ABB Limited ("ABB") has referred to Orgalime S2000 in a quotation or other type of offer or in an order acknowledgement, Orgalime S 2000 and this Addendum shall apply to the resulting contract between ABB and the Purchaser. If the Purchaser refers to other terms and conditions in the Purchaser's previous or subsequent communications with ABB, such other terms and conditions shall apply only to the extent ABB expressly agrees to such terms and conditions in writing.
- 1.2 The Purchaser represents that it has access to the Orgalime S 2000 terms and conditions.
- 1.3 In the event of any contradictions or discrepancies between this Addendum and Orgalime S 2000, this Addendum shall prevail.

### 2 DEFINITIONS

- 2.1 In Orgalime S 2000 and this Addendum,
- (a) "Article" shall refer to an article in this Addendum;
  - (b) "Clause" shall refer to a clause in Orgalime S 2000;
  - (c) "Orgalime S 2000" shall mean Orgalime's General Conditions for the Supply of Mechanical, Electrical and Electronic Products, August 2000 edition or the latest edition published thereafter;
  - (d) "Product" shall mean all goods, materials, plant, equipment and services to be provided by ABB under this contract as described in the quotation issued by ABB;
  - (e) "Purchaser" shall mean the other party to this contract; and (f) "Supplier" shall mean ABB.

### 3 AMENDMENTS

- 3.1 Standard Products
- 3.1.1 The Product shall be supplied in its standard version together with ABB's relevant standard documentation and instruction manuals as appropriate. Alternative versions, finishes, colours, special packing and additional documentation may be supplied at extra charge, as agreed in writing.
- 3.1.2 The Product is not warranted to be fit for any particular purpose, unless and to the extent such particular purpose has been expressly specified and warranted by ABB in writing.
- 3.2 Delivery. Passing of Risk
- 3.2.1 Whenever ABB is responsible for the delivery of the Products, the Purchaser shall inspect the Products upon receipt and notify ABB in writing of any transit damage within forty-eight (48) hours from delivery. Failing which, remedial costs shall be the responsibility of the Purchaser or its insurer.
- 3.3 Payment
- 3.3.1 Payment shall be made by the Purchaser no later than thirty (30) days from the date of the invoice. Time of payment is of the essence of the contract and ABB reserves the right to suspend the provision of Products to the Purchaser where any amounts are overdue under the contract or under any other contract until all such amounts have been paid. No queries concerning an invoice will be considered more than 14 days from the date of its issue. Payment may be made via BACS.
- 3.3.2 Payment shall be made in the currency in which the purchase price was quoted by ABB.
- 3.3.3 Where ABB has entered into a "Credit Agreement" with the Purchaser, the Credit Agreement with its credit limit shall form part of the contract. To the extent permitted by applicable law, if in ABB's reasonable opinion there are grounds for doubting the creditworthiness of the Purchaser at any time, such as but not limited to, the Purchaser's failure to pay ABB's invoice on this contract or any other contract when due and/or the Purchaser exceeding its agreed credit limit with ABB, then ABB may, refuse to proceed with orders or suspend delivery of Products to the Purchaser, under this contract and any other contract, agreement or arrangement entered into with the Purchaser whether independent of or connected to this contract without being in breach of contract and without incurring any liability to the Purchaser until ABB is paid for the relevant Products or the parties otherwise resolve the issue.
- 3.4 VAT
- 3.4.1 The purchase price is strictly net and exclusive of VAT and similar.

### 3.5 Retention of Title

- 3.5.1 Until title in the Product has passed to the Purchaser, the Purchaser shall keep the Product and any part thereof in the Purchaser's possession clearly marked or otherwise identified as being ABB's and store it separately from the Purchaser's own plant and equipment. ABB shall be entitled at any time during normal business hours to enter the Purchaser's premises in order to inspect the Product and ensure that it is so marked or clearly identified.
- 3.5.2 Should the contract be terminated by ABB for any reason before title in the Product has passed to the Purchaser, or ABB has grounds for doubting the creditworthiness of the Purchaser (cf. Article 3.3.3), ABB shall be entitled at any time during normal business hours to enter the Purchaser's premises in order to recover the Product. ABB reserves the right to dispose of any Product so recovered.
- 3.5.3 To the extent permitted by applicable law, legal and beneficial title to the Product shall remain with ABB until such time as ABB has received payment of the purchase price for the Products due under the contract and any other sums due (together with any interest which may have accrued) in respect of any other goods or services previously or subsequently supplied by ABB to the Purchaser under any other agreement. Where such payments have been received by ABB title shall pass to the Purchaser.
- 3.5.4 Notwithstanding any appropriation by the Purchaser to the contrary, all payments made by the Purchaser to ABB shall be appropriated first to the Products which have been resold by the Purchaser and then to the Products which remain in the Purchaser's possession or control.
- 3.5.5 If the Purchaser resells any Products in which title has not passed to the Purchaser, with respect to the proceeds of such resale only, the resale shall (as between ABB and the Purchaser only) be made by the Purchaser as agent for ABB.
- 3.5.6 For the avoidance of doubt, risk in the Product shall pass to the Purchaser at the time specified in the applicable INCOTERMS. From the time when risk in the Products passes until the time when title passes to the Purchaser in accordance with Article 3.5.3, the Purchaser shall insure the Products for their full value with a reputable insurer. Until title in the Products passes to the Purchaser, the Purchaser shall hold the proceeds of any sale or claim on such insurance policy on trust for ABB and shall immediately account to ABB with the proceeds.

### 3.6 Export Restrictions and Non-Authorised Use

- 3.6.1 Any supply of technology under the contract shall be subject to any laws and other restrictions on the export, re-export or import of any technology licensed under the contract as may be imposed from time to time by the UK or United States Governments or their agencies. The Purchaser shall not export, re-export or import, directly or indirectly, any such technology licensed from or provided by ABB to any country for which the UK or United States Governments or any their agencies require an export licence or other Government approval at the time of such export, without first obtaining such licence or approval. The Purchaser shall require that all third parties receiving such technology from the Purchaser comply with this requirement. ABB shall assist the Purchaser in every reasonable way in the investigation and clarification of any possible export or import licence requirements and in the obtaining of such licences at the Purchaser's cost.
- 3.6.2 The performance by either of the parties of an obligation under this contract, which performance requires an export or import licence or other government approval, and any other obligation affected shall, to the extent it is necessary, automatically be suspended until such licence or approval as mentioned in Article 3.6.1 is given. If such licence is not granted within a reasonable time or is revoked by the

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appropriate authorities, ABB shall be entitled to terminate this contract, and the Purchaser shall indemnify ABB on demand for any loss or damage which ABB may suffer or incur as a result of such termination. 3.6.3. Unless expressly agreed in writing by ABB, the Product is provided on strict condition that:

- (a) the Product is solely for civil use;
- (b) the Product is not to be supplied to any country whether directly or indirectly or for any application where such supply or application
- (c) the Product will not in any way be installed, used or applied in or in connection with the operation of any nuclear facilities such as but not limited to nuclear power plants, nuclear fuel manufacturing plants, uranium enrichment plants, spent nuclear fuel stores or research reactors.

3.6.4 Whenever ABB so requests, the Purchaser shall provide ABB with an end-user certificate, which shall be on such terms and in such form as ABB may require and signed by the end-user confirming that it shall comply with Article 3.6.3 items (a) - (c) . Until such time as ABB has received such end-user certificate, ABB shall be entitled to suspend the performance under this contract.

3.6.5 The end-user certificate shall form part of this contract. The Purchaser agrees and accepts that it shall be liable for any acts or omissions in relation to the use of the Products (including (without limit) the acts or omissions of its employees, agents, subcontractors, customers, any end user of the Products and/or any third party) in breach any of the provisions set out in Article 3.6.3, items (a) - (c) and further agrees that such a breach shall be deemed a fundamental breach of contract by the Purchaser, and shall entitle ABB to terminate the contract forthwith by giving notice to the Purchaser.

3.6.6 ABB may at its reasonable discretion, without breaching the contract, delay, withhold or refuse the provision of services to be undertaken in any territory or upon any site deemed by ABB to be unsafe or unfit for ABB's personnel, upon notice of which the parties may agree to reschedule or remove said portion of services from scope.

3.6.7 The Purchaser shall keep ABB, its officers, directors, employees, agents and advisers indemnified against any and all claims and liabilities arising out of any breach by the Purchaser or any for whom the Purchaser is liable (which shall, without limitation, include the end-user) of any of the provisions set out in this Article 3.6.

### **3.7 Confidentiality**

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

#### **3.8. Liability for Defects**

3.8.1 The defects liability period, as stipulated in Clause 23, shall be six (6) months from delivery for Turbocharger spare or repaired parts.

3.8.2 Except as expressly set out in Orgalime S2000 and this Addendum, all conditions, warranties and representations, implied by statute, common law or otherwise, in relation to the supply, non supply or delay in supplying the Products are excluded to the fullest extent permitted by law and the warranties, as stipulated in Clauses 22-36 and Article 3.8.3, are exclusive and in lieu of all other warranties, conditions, terms, representations, statements, undertakings and obligations whether expressed or implied by statute, common law, custom, usage or otherwise, all of which are excluded to the fullest extent permitted by law.

3.8.3 Save as stipulated in Clauses 22-36, the necessary repair, replacement or re-performance shall constitute ABB's total liability to the Purchaser for defects in design, material or workmanship.

### **3.9 Insurance**

3.9.1 ABB shall maintain Employer's Liability insurance as required pursuant to the law and Public/Products Liability insurance in respect of its obligations and liabilities under the contract for an amount of two million pounds (£2,000,000) per one event and in the aggregate. ABB shall upon request produce to the Purchaser evidence of satisfactory policies of insurance in the form of its Brokers letter.

### **3.10 Limitation of Liability**

3.10.1 To the maximum extent permitted by applicable law, and notwithstanding anything to the contrary in this contract, other than the express provisions for liquidated damages, in no event shall ABB be liable to the Purchaser, whether as a result of breach of contract, warranty, guarantee, indemnity, tort (including negligence), strict liability, statutory duty or otherwise, for any of the following damages or losses, in each case whether direct or indirect, such as, but not limited to:

- (a) loss of revenue,
- (b) loss of profit,
- (c) loss of contract,
- (d) loss of business,
- (e) loss of use,
- (f) loss of production,
- (g) interruption of business,
- (h) loss of operation time,
- (i) costs of capital,
- (j) cost in connection with interruption of operation,
- (k) economic loss, or(l) any special, incidental or consequential loss or damage, howsoever caused even if ABB was advised of the possibility of them in advance.

3.10.2 To the maximum extent permitted by applicable law, and notwithstanding anything to the contrary in this contract, ABB's total liability in respect of any and all claims for damages or losses, caused by breach of contract, warranty, guarantee, indemnity, tort (including negligence), strict liability, statutory duty or otherwise, which may arise in connection with its performance or non-performance under this contract shall not exceed in the aggregate the total purchase price.

3.10.3 The Purchaser acknowledges that the contents of this Article 3.10 have been especially brought to the Purchaser's attention, and agree the exclusions and limitations on liability are reasonable in the circumstances.

### **3.11 Indemnification**

3.11.1 If Products are to be manufactured or any process is to be applied to Products by ABB in accordance with a specification submitted by the Purchaser, the Purchaser shall indemnify and hold harmless ABB on demand against all losses, damages, costs (including legal costs), expenses, liabilities and claims suffered or incurred by ABB in connection with infringement of any intellectual property rights of any third party resulting from ABB's use of the Purchaser's specification.

### **3.12 Limitation Period**

3.12.1 Subject to law as regards personal injury and death, the Purchaser shall have no claim against ABB, in contract or in tort, in relation to anything performed or delivered under this contract (including claims for defective Products, services or goods), unless ABB has been notified in writing of such claim within twenty-four (24) months of delivery of the Product.

### **3.13 Termination**

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- 3.13.1 Should:
- (a) the Purchaser's payments be overdue by more than 14 calendar days;
  - (b) a breach of the contract occurs in the circumstances set out in Article 3.6.5;
  - (c) a breach of the contract occurs in the circumstances set out in Article 3.17.1;
  - (d) proceedings be commenced to wind up the Purchaser (except for the purpose of solvent amalgamation or reconstruction);
  - (e) any composition or arrangement with the Purchaser's creditors be made;
  - (f) the Purchaser be put into administration, or if a receiver is appointed;
  - (g) the Purchaser stops or suspend payment of its debts or is unable to, or has no real prospect of being able to, or admits an inability to, pay its debts as they fall due or fails to satisfy any judgment debt in whole or in part within 14 days; or
  - (h) the Purchaser ceases or threatens to cease to carry on the whole or a substantial part of its business or is dissolved; ABB shall be entitled (without incurring any liability to the Purchaser) to terminate the contract immediately by notice in writing to the Purchaser, and thereupon to recover any loss or damage ABB has suffered or incurred as a result of such termination, except that the compensation paid towards such loss or damage shall not exceed the purchase price.
- 3.14 Force Majeure**
- 3.14.1 For the elimination of any doubt, "circumstances beyond the control of the parties", (cf. Clause 39), shall be deemed to include, without limitation, any acts of God, act of terrorism, sanction, blockage, import restriction or any other act or failure to act of any state or national government authority.
- 3.14.2 Should a Force Majeure event occur, the delivery date(s) shall be extended by a period equal to the duration of the Force Majeure event plus a reasonable time to overcome the consequences of the Force Majeure event and all additional costs and expenses incurred by ABB shall be paid by the Purchaser to ABB in addition to the purchase price.
- 3.15 Exclusion of Third Party Rights**
- 3.15.1 The parties do not intend that a person who is not a party to this contract shall have any rights to enforce any term of this contract.
- 3.16 Governing Law**
- 3.16.1 This contract shall in all respects be governed by and construed in accordance with the laws of England and Wales. The parties agree that the United Nations Convention On Contracts For The International Sale Of Goods 1980 shall not apply to this contract (even if the United Kingdom or any part thereof should accede to the said convention).
- 3.17 Miscellaneous**
- 3.17.1 The Purchaser shall acquaint itself and comply with ABB's Code of Conduct as displayed on ABB's website (<http://www.abb.com>) as may be updated or modified from time to time. The Purchaser agrees to perform its contractual obligations under this contract with substantially similar standards of ethical behaviour.
- 3.17.2 This contract constitutes the complete and full understanding between the parties thereto with respect to the subject matter of this contract and save in respect of fraud supersedes all previous negotiations, representations, agreements, commitments and writing in respect thereof. Neither party shall be bound by any terms conditions, definitions, warranties, understandings or representations with respect to such subject matter other than as expressly provided in this contract or as duly set forth on or subsequent to the effective date thereof in writing.
- 3.17.3 No changes, alterations or modifications to the contract shall be effective unless the same shall be in writing and signed by both parties.
- 3.17.4 The contract language shall be in English. All contract communications and documentation to be in English.
- 3.17.5 The Purchaser may not subcontract, transfer or assign any of its rights or obligations in connection with this contract.
- 3.17.6 If during the term of this contract there are changed or new laws, orders, regulations, standards or by-laws, which become effective and which affect the cost or time of performance of this contract, then an equitable adjustment shall be made to the date(s) specified in the contract and an equitable adjustment to the price(s) payable for the Products shall be made to compensate ABB for any increase in costs resulting there from.
- 3.17.7 The invalidity or unenforceability of any provision of this contract shall not affect the validity of the remaining provisions. If any provision proves to be invalid or unenforceable, the parties shall replace the invalid or unenforceable provision by a valid new one having an effect as close as possible to the invalid or unenforceable provision.
- 3.17.8 ABB Turbocharging UK generally only installs, assembles or repairs original ABB parts and turbochargers. In case that the Purchaser provides to ABB non original parts or turbochargers in connection with agreed services or a part thereof, ABB reserves the right not to perform such services or related part thereof or cancel the respective order.
- 3.17.9 The Purchaser shall allow ABB access to site and the equipment. The Purchaser shall make appropriate equipment available to ABB for technical evaluation of the equipment. The Purchaser shall make available to ABB all necessary tools and machines for ABB's use in the performance of the Services.
- 3.17.10 If in the provision of the Services, ABB's personnel visit any of the Purchaser's site(s) then the Purchaser will be responsible for: (i) the provision of a safe working environment including the provision of safety, health and environmental information regarding the site(s), equipment and processes on which ABB's personnel are to work; and (ii) advising ABB's personnel of the rules and regulations applying to the site(s) on which they work.
- 3.17.11 If, in the reasonable opinion of ABB, the Purchaser site(s) are not a safe working environment for ABB personnel, ABB will suspend works and advise the Purchaser in writing the reason for the suspension, and the subsequent costs and delay to programme for the suspension and subsequent remobilisation will be at the clients account.
- 3.17.12 ABB shall use all reasonable endeavours to ensure that its personnel when visiting the Purchaser's premises shall comply with all the rules and regulations which are applicable thereto provided the Purchaser has informed ABB of such rules and regulations in good time and in the English Language.
- 3.17.13 Purchaser shall make available on the Site for use by ABB for the purposes of the Subcontract Works such supplies of electricity, water, gas, air and other services as may be specified in the Contract, Order or Specification and such supplies shall be made available at the point(s) specified therein. Such other facilities including but not limited to all necessary workshops, sheds or other buildings ("On Site Facilities") for ABB's employees and workmen shall be erected in accordance with the Contract, Order or Specification. In the event that the Contract, Order or Specification is silent with regard to On Site Facilities, they shall be provided by Purchaser.

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