

## **ABB ADDENDUM TO ORGALIME SE 01**

### 1. GENERAL

- 1.1. Whenever ABB Limited ("ABB") has referred to Orgalime SE 01 in an offer or order acknowledgement, Orgalime SE 01 and this Addendum shall apply to the resulting Contract. If the Purchaser refers to other conditions, such conditions shall apply only to the extent ABB agrees to them In Writing.
- 1.2. The Purchaser represents that it has access to the Orgalime SE 01 general conditions.
- 1.3. In the event of any contradictions between this Addendum and Orgalime SE 01, this Addendum shall prevail.

### 2. DEFINITIONS

In Orgalime SE 01 and this Addendum,

- (a) "Article" shall refer to an article in this Addendum;
- (b) "Clause" shall refer to a clause in Orgalime SE 01;
- (c) "Contractor" shall mean ABB;
- (d) "Orgalime SE 01" shall mean Orgalime's General Conditions for the Supply and Erection of Mechanical, Electrical and Electronic Products, September 2001 edition or the latest edition published thereafter; and
- (e) "Purchaser" shall mean the other party to this Contract.

### 3. STANDARD PRODUCTS

- 3.1. Unless agreed otherwise In Writing, the Plant shall be supplied in its standard version, including in respect of documentation, instruction manuals, finish and packing.
- 3.2. The Plant is not warranted to be fit for any particular purpose, unless specified and warranted by ABB In Writing.

### 4. DRAWINGS AND DESCRIPTIONS

- 4.1. Where ABB is to submit drawings for approval, the Purchaser approves or otherwise within the time given in the Contract, or, if no time limit is specified, within fourteen (14) days of receipt, failing which they shall be deemed to have been approved.
- 4.2. The Contract language shall be in English. All Contract communications and documentation shall be in English.

### 5. HEALTH AND SAFETY

- 5.1. Unless the parties have agreed other safety regulations for the Site in the Contract or subsequently In Writing, The Construction (Design and Management) Regulations 2007 ("CDM Regulations") and subsequent re-enactments shall apply.
- 5.2. The price for providing specialist roles such as CDM Co-ordinator, Designer or Principle Contractor (as defined in the above-mentioned CDM Regulations) is not included in the Contract Price, unless agreed otherwise In Writing.

### 6. VARIATIONS

- 6.1. No such variations shall be effective unless agreed In Writing and signed by both parties.

### 7. DELIVERY, PASSING OF RISK

- 7.1. The Purchaser shall inspect the Plant and notify ABB In Writing of any loss, shortage, excess or transit damage within forty-eight (48) hours of delivery and permit ABB immediate rights of inspection and investigation. Failing which, any remedial costs shall be the responsibility of the Purchaser.
- 7.2. The Purchaser shall only be entitled to request proof of delivery within five (5) days of receipt of ABB's invoice, failing which, delivery is deemed to have taken place. ABB shall provide such proof within five (5) days of receipt.
- 7.3. For the avoidance of doubt, risk in the Plant shall pass to the Purchaser at the time specified in the applicable

INCOTERMS. From the time when risk in the Plant passes until the time when title passes to the Purchaser in accordance with Article 9.3, the Purchaser shall insure the Plant for its full value with a reputable insurer and hold the proceeds of any sale or claim on such insurance policy on trust for ABB, remitting to ABB the proceeds upon demand.

### 8. PAYMENT & VAT

- 8.1. ABB shall be entitled to invoice the Purchaser as follows:
    - (a) immediately after the formation of the Contract: 10% of the Contract Price;
    - (b) when agreed drawings/information has been delivered: 20% of the Contract Price;
    - (c) on notification to the Purchaser that the Plant, or an essential part thereof, is ready for dispatch from the place of manufacture: 60% of the Contract Price; and
    - (d) on take-over or ninety (90) days from event ((c)), whichever first occurs: 10% of the Contract Price.
  - 8.2. 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 the Plant 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 fourteen (14) days from the date of its issue. Payment may be made via BACS.
  - 8.3. Payment shall be made in the currency quoted by ABB.
  - 8.4. Without prejudice to any other right or remedy, ABB will be entitled to set-off any amount otherwise due to the Purchaser under this Contract or any other contract against any sum or sums which the Purchaser is or may be liable to pay ABB or recover any such amount as a debt.
  - 8.5. 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, suspend delivery of the Plant or suspend completion of the Works 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 Plant and Works or the parties otherwise resolve the issue.
  - 8.6. The Contract Price is strictly net and exclusive of VAT.
- ### 9. RETENTION OF TITLE
- 9.1. Until title in the Plant has passed to the Purchaser, the Purchaser shall keep the Plant clearly marked as ABB's and store it separately from the Purchaser's own plant and equipment. ABB shall be entitled during normal business hours to enter the Purchaser's premises in order to inspect the Plant.
  - 9.2. Should the Contract be terminated by ABB for any reason before title in the Plant has passed to the Purchaser, or ABB has grounds for doubting the creditworthiness of the Purchaser (cf. Article 8.5), ABB shall be entitled during normal business hours to enter the Purchaser's premises and recover the Plant. ABB reserves the right to dispose of any Plant so recovered.
  - 9.3. To the extent permitted by law, title to the Plant shall remain with ABB until it has received payment in full due under the

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- 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.
- 9.4. Notwithstanding any appropriation by the Purchaser to the contrary, all payments made by the Purchaser to ABB shall be appropriated first to the Plant which have been resold by the Purchaser and then to the Plant which remain in the Purchaser's possession or control.
- 9.5. If the Purchaser resells any Plant in which title has not passed to the Purchaser, the proceeds of such resale shall (as between ABB and the Purchaser only) be made by the Purchaser as agent for ABB.
- 9.6. For the avoidance of doubt, risk in the Plant shall pass to the Purchaser at the time specified in the applicable INCOTERMS. From the time when risk in the Plant passes until the time when title passes to the Purchaser in accordance with Article 9.3, the Purchaser shall insure the Plant for their full value with a reputable insurer. Until title in the Plant 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.
10. LIABILITY FOR DEFECTS
- 10.1. Except as expressly set out in Orgalime SE 01 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 Works are excluded to the fullest extent permitted by law and the warranties, as stipulated in Clauses 51-64 and Article 10.2, 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.
- 10.2. Save as stipulated in Clauses 51-64, the necessary repair, replacement or re-performance shall constitute ABB's total liability to the Purchaser for defects in design, material or workmanship.
11. FORCE MAJEURE
- 11.1. 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 and all additional costs and expenses incurred by ABB shall be paid by the Purchaser in addition to the Contract Price.
- 11.2. For the elimination of any doubt, "circumstances beyond the control of the parties", (cf. Clause 67), 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.
12. EXPORT RESTRICTIONS AND NON-AUTHORISED USE
- 12.1. Unless expressly agreed otherwise in writing by ABB, the Plant is provided on strict condition that:
- the Plant is solely for civil use;
  - the Plant is not to be supplied to any country whether directly or indirectly or for any application where such supply or application is prohibited by any law or regulation binding or effective in that country, in the UK, the US or the country of manufacture;
  - the Plant 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; and
- d) 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 12.1 (a) to (c) . Until such time as ABB has received such end-user certificate, ABB shall be entitled to suspend the performance under this Contract. 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 Plant (including (without limit) the acts or omissions of its employees, agents, subcontractors, customers, any end user of the Plant and/or any third party) in breach any of the provisions set out in Article 12.1 (a) to (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.
- 12.2. The Purchaser shall comply with all laws and other restrictions on the export, re-export or import of any Plant or technology licensed under the Contract as may be imposed from time to time by the UK or US Governments or their agencies, and shall procure such export licence or other Government approval as may be required. The Purchaser shall require that all third parties receiving such Plant or technology from the Purchaser comply with this requirement. ABB shall assist the Purchaser in every reasonable way in obtaining of such licences at the Purchaser's cost.
- 12.3. 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 12.2 is given. If such licence is not granted within a reasonable time or is revoked by the 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.
- 12.4. 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.
- 12.5. 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 12.
13. CONFIDENTIALITY
- 13.1. 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.
14. INSURANCE
- 14.1. ABB shall maintain Employer's Liability insurance as required by 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.
15. INDEMNIFICATION
- 15.1. If Plant is to be manufactured or any process is to be applied to Plant by ABB in accordance with a specification submitted

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by the Purchaser, the Purchaser shall indemnify ABB 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.

### 16. LIMITATION OF LIABILITY

16.1. To the maximum extent permitted by 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) economic loss,
- (k) costs in connection with interruption of operation, or
- (l) any special, incidental or consequential loss or damage,

howsoever caused even if ABB was advised of the possibility of them in advance.

16.2. To the maximum extent permitted by 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 Contract Price.

16.3. The Purchaser acknowledges that the contents of this Article 16 have been especially brought to the Purchaser's attention, and agree the exclusions and limitations on liability are reasonable in the circumstances.

### 17. LIMITATION PERIOD

17.1. 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 Plant, Works, services or goods), unless ABB has been notified In Writing of such claim within twenty-four (24) months of taking-over or thirty (30) months of delivery of the Plant, whichever is the longer.

### 18. TERMINATION

18.1. Should

- (a) the Purchaser's payments be overdue by more than fourteen (14) days;
- (b) a breach of the Contract occurs in the circumstances set out in Article 12.1(d) or in Article 20.1;
- (c) proceedings be commenced to wind up the Purchaser (except for the purpose of solvent amalgamation or reconstruction);
- (d) any composition or arrangement with the Purchaser's creditors be made;
- (e) the Purchaser be put into administration, or if a receiver is appointed;
- (f) 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 fourteen (14) days; or

- (g) 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.

### 19. EXCLUSION OF THIRD PARTY RIGHTS

19.1. 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.

### 20. MISCELLANEOUS

20.1. 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.

20.2. The Contract constitutes the complete and full understanding between the parties and save in respect of fraud supersedes all previous representations, negotiations and agreements in respect thereof. Neither party shall be bound by any terms other than as expressly provided in this Contract or as duly set forth on or as subsequently agreed between the parties In Writing.

20.3. The Purchaser shall not use the name or logo of ABB or product designations on any letter heading, publication, advertisement or other literature without prior written approval of ABB, such approval shall be at ABB's sole discretion.

20.4. The Purchaser may not subcontract, transfer or assign any of its rights or obligations in connection with this Contract.

20.5. The invalidity, illegality or unenforceability of any provision of this Contract shall not affect the validity of the remaining provisions. If any provision proves to be invalid, illegal or unenforceable, the parties shall replace such provision by a valid new one having an effect as close as possible to the original provision.

### 21. GOVERNING LAW

21.1. The 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 shall not apply to this Contract (even if the United Kingdom or any part thereof should accede to the said convention).