

## **ABB ADDENDUM TO ORGALIME M2000**

1. GENERAL
- 1.1. Whenever ABB Limited ("ABB") has referred to Orgalime M2000 in a quotation or other type of offer or in an order acknowledgement, Orgalime M2000 and this Addendum shall apply to the resulting Contract between ABB and the Customer. If the Customer refers to other terms and conditions in the Customer's previous or subsequent communications with ABB, such other terms and conditions shall apply only to the extent ABB expressly agrees thereto In Writing.
- 1.2. The Customer represents that it has access to the Orgalime M2000 terms and conditions.
- 1.3. Should ABB accept other terms and conditions than the ones contained in Orgalime M2000 and this Addendum, ABB shall not be bound by the price, delivery terms, warranties and other terms quoted by ABB, unless the ABB quotation expressly refers to those other terms and conditions.
- 1.4. In the event of any contradictions or discrepancies between this Addendum and Orgalime M2000, this Addendum shall prevail.
2. DEFINITIONS
- In Orgalime M2000 and this Addendum,
  - (a) "Contractor" shall mean ABB; and
  - (b) "Customer" shall mean the other party to the Contract; and
  - (c) "Orgalime M2000" shall mean Orgalime's General Conditions for Maintenance, September 2000 edition or the latest edition published thereafter.
3. AMENDMENTS
- 3.1. Standard Products
- 3.1.1. Any spare or replacement parts shall be supplied in their standard version together with Contractor's relevant standard documentation and instruction manuals as appropriate. Alternative finishes, colours and special packing may be supplied at extra charge, as may additional documentation.
- 3.1.2. The maintenance 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 Contractor In Writing.
- 3.1.3. Notwithstanding anything contained in this Contract to the contrary, the necessary repair or replacement shall constitute Contractor's total liability to the Customer for defects in design, material or workmanship.
- 3.2. Health and Safety
- 3.2.1. Unless the parties have agreed other safety regulations for the Site in the Contract or subsequently In Writing, the Safety, Health and Welfare at Work (Construction) Regulations 2013 ("Regulations") and subsequent re-enactments shall apply.
- 3.2.2. The price for specialist roles such as Project Supervisor Design Process, Project Supervisor Construction Stage, Designer or Contractor Responsible for a Construction Site (as defined in the above-mentioned Regulations) is not included in the Contract price, unless agreed separately In Writing.
- 3.2.3. The Contractor shall notify the Customer as soon as reasonably possible of any conditions or practices on the site which in its reasonable opinion are or could give rise to unsafe working conditions. Where such unsafe conditions exist the Contractor shall withdraw its personnel to a place of safety pending implementation of a suitable remedy by the Customer and shall not be considered to be in breach of the Contract during any such period where such conditions exist.
- 3.3. Payment Terms
- 3.3.1. Contractor shall be entitled to invoice the Customer in accordance with the schedule of agreed payment attached to the Contract
- 3.3.2. Should part of an invoice be disputed by the Customer, the Customer shall nevertheless pay the undisputed amount on the due payment date. Payment may be made via BACS. For avoidance of doubt termination due to Force Majeure shall be treated as termination for convenience and all amounts owed or costs accrued in relation to the Contract by the Contractor shall be paid by the Customer within 60 days of presentation of a final account invoice.
- 3.3.3. Payment shall be made in the currency in which the Contract price was quoted by Contractor.
- 3.3.4. Should
  - (a) the Customer's payments be overdue by more than 14 calendar days;
  - (b) proceedings be commenced to wind up the Customer (except for the purpose of solvent amalgamation or reconstruction);
  - (c) any composition or arrangement with the Customer's creditors be made; or
  - (d) the Customer be put under administration, or if a receiver is appointed,Contractor shall be entitled (without incurring any liability therefor) to terminate the Contract by notice In Writing, and thereupon to recover any loss or damage Contractor has suffered as a result of such termination, except that the compensation paid towards such loss or damage shall not exceed the Contract price.
- 3.4. VAT
- The Contract price is strictly net and exclusive of VAT and similar.
- 3.5. Retention of Title
- 3.5.1. Until title in any spare parts has passed to the Customer, the Customer shall keep the spares and any part thereof in the Customer's possession clearly marked or otherwise identified as being Contractor's, and store them separately from the Customer's own plant. Contractor shall be entitled at any time during normal business hours to enter the Customer's premises in order to inspect the spares and ensure that it is so marked or clearly identified.
- 3.5.2. Should the Contract be terminated by Contractor for any reason before title in the Product has passed to the Customer, or Contractor has grounds for doubting the credit worthiness of the Customer (cf. Article 3.3.4), Contractor shall be entitled at any time during normal business hours to enter the Customer's premises in order to recover the Product. Contractor 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 Contractor until such time as Contractor 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 Contractor to the Customer

## **ABB ADDENDUM TO ORGALIME M2000**

- under any other agreement. Where such payments have been received by Contractor title shall pass to the Customer.
- 3.5.4. Notwithstanding any appropriation by the Customer to the contrary, all payments made by the Customer to Contractor shall be appropriated first to the Products which have been resold by the Customer and then to the Products which remain in the Customer's possession or control.
- 3.5.5. If the Customer resells any Products in which title has not passed to the Customer, with respect to the proceeds of such resale only, the resale shall (as between Contractor and the Customer only) be made by the Customer as agent for Contractor.
- 3.5.6. For the avoidance of doubt, risk in the Product shall pass to the Customer 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 Customer in accordance with Article 3.5.3, the Customer shall insure the Products for their full value with a reputable insurer. Until title in the Products passes to the Customer, the Customer shall hold the proceeds of any sale or claim on such insurance policy on trust for Contractor and shall immediately account to Contractor 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 Irish or United States Governments or their agencies. The Customer shall not knowingly export, re-export or import, directly or indirectly, any such technology licensed from or provided by Contractor to any country for which the Irish 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 Customer shall require that all third parties receiving such technology from the Customer comply with this requirement.
- Contractor shall assist the Customer 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 Customer's cost.
- 3.6.2. The performance by either of the parties of an obligation under the 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 sub-clause 3.6.1 is given. If such licence is not granted within a reasonable time or is revoked by the appropriate authorities, Contractor shall be entitled to terminate the Contract, and the Customer shall compensate Contractor for any loss or damage as a result of such termination.
- 3.6.3. Unless expressly agreed In Writing by Contractor, the maintenance services and spares are provided on strict condition that:
- (a) they are solely for civil use;
- (b) they are 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 Republic of Ireland or the country of manufacture; and
- (c) they will not in any way be installed, used or applied in or in connexion 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 Contractor so requests, the Customer shall provide Contractor with an end-user certificate, which shall be subject to Contractor's reasonable approval and signed by the Customer's authorised representative, confirming that the end-user shall comply with sub-clause 3.6.3, items ((a)) - ((c)). Until such time as Contractor has received such end-user certificate, Contractor shall be entitled to suspend the Contract.
- 3.6.5. The end-user certificate referred to in sub-clause 3.6.4 shall form part of the Contract and any breach by the Customer or any for whom the Customer is liable (which shall, without limitation, include the end-user) of any of the provisions set out in sub-clause 3.6.3, items ((a)) - ((c)), shall be deemed a fundamental breach of contract by the Customer, and shall entitle Contractor to terminate the Contract forthwith by giving notice to the Customer.
- 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 Contractor to be unsafe or unfit for Contractor's personnel, upon notice of which the parties may agree to reschedule or remove said portion of services from scope.
- 3.6.7. The Customer shall keep Contractor, its officers, directors, employees, agents and advisers indemnified against any claims and liabilities arising out of any breach by the Customer or any for whom the Customer is liable (which shall, without limitation, include the end-user) of any of the provisions set out in this sub-clause 3.6.
- 3.7. Confidentiality
- 3.7.1. The Customer shall keep all information communicated to the Customer in connection with this contract, or otherwise concerning Contractor'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. Except as expressly set out in Orgalime M2000 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 22-28 and Article 3.8.2, 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.
- 3.8.2. Save as stipulated in Clauses 22-36, the necessary repair, replacement or re-performance shall constitute Contractor's total liability to the Customer for defects in design, material or workmanship.
- 3.9. Insurance
- 3.9.1. Contractor shall maintain Employer's Liability insurance as required pursuant to the law and

## **ABB ADDENDUM TO ORGALIME M2000**

Public/Products Liability insurance in respect of its obligations and liabilities under the Contract for an amount of ten million US dollars (\$10,000,000) per one event and twenty-five US dollars (\$25,000,000) in the aggregate. Contractor shall upon request produce to the Customer evidence of satisfactory policies of insurance in the form of its Broker's 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 Contractor be liable to the Customer, 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 Contractor 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, Contractor'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.

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

### **3.11. Indemnification**

If Plant is to be manufactured or any process is to be applied to Equipment by Contractor in accordance with a specification submitted by the Customer, the Customer shall indemnify Contractor against all losses, damages, costs, expenses and claims suffered or incurred by Contractor in connection with infringement of any intellectual property rights of any third party resulting from Contractor's use of the Customer's specification.

### **3.12. Limitation period**

Subject to law as regards personal injury and death, the Customer shall have no claim against Contractor, in contract or in tort, in relation to anything performed

or delivered under the Contract (including claims for defective spares, maintenance services or goods), unless Contractor has been notified In Writing of such claim within twenty-four (24) months of completion of such maintenance services.

### **3.13. Termination**

#### **3.13.1. Should**

- (a) the Customer'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 3.18.1;
- (d) proceedings be commenced to wind up the Customer (except for the purpose of solvent amalgamation or reconstruction);
- (e) any composition or arrangement with the Customer's creditors be made;
- (f) the Customer be put into administration, or if a receiver is appointed;
- (g) the Customer 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 Customer ceases or threatens to cease to carry on the whole or a substantial part of its business or is dissolved;

Contractor shall be entitled (without incurring any liability to the Customer) to terminate the Contract immediately by notice In Writing to the Customer, and thereupon to recover any loss or damage Contractor has suffered or incurred as a result of such termination, except that the compensation paid towards such loss or damage shall not exceed the Contract 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.

3.15. 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 Contractor shall be paid by the Customer to Contractor in addition to the Contract price.

### **3.16. Exclusion of third party rights**

Pursuant to section 1(2)(a) of the Contracts (Right of Third Parties) Act 1999 (the "Act"), the parties intend that no terms of the Contract may be enforced by a Third Party (as the term "Third Party" is defined in the Act).

### **3.17. Governing law**

The Contract shall in all respects be governed by and construed in accordance with the substantive law of the Republic of Ireland. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract (even if the Republic of Ireland

or any part thereof should accede to the said convention).

**3.18. Miscellaneous**

- 3.18.1. The Customer 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 Customer agrees to perform its contractual obligations under this Contract with substantially similar standards of ethical behaviour.
- 3.18.2. 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.
- 3.18.3. No changes, alterations or modifications to the Contract shall be effective unless the same shall be In Writing and signed by both parties.
- 3.18.4. The Contract language shall be in English. All Contract communications and documentation to be in English.
- 3.18.5. The Customer may not subcontract, transfer or assign any of its rights or obligations in connection with this Contract.
- 3.18.6. 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 Equipment shall be made to compensate Contractor for any increase in costs resulting therefrom.

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.