

# GENERAL SALES TERMS AND CONDITIONS



These General Sales Terms and Conditions (GTCs) apply to all contractual relations between ABB and its Customers regarding Products, Systems or Services.

These GTC's, together with the Order and the Order Confirmation, constitute the entire agreement between the Parties and supersede any prior verbal or written understandings or representations between ABB and the Customer relating to the Supply.

Capitalized terms of these GTC's shall have the meaning attributed as per Article 1 "Definitions".

## 1. DEFINITIONS

**ABB:** ABB Inženiring d.o.o., Ljubljana, Brnčičeva ulica 19G, Registration number: 1233378000, acting as supplier.

**ABB Data:** any data or information, including Personal Data, acquired by Customer in preparation of or during the fulfilment of the Contract, irrespective of whether such data or information relates to ABB, its Affiliates or their respective customers or suppliers.

**Affiliate:** any entity which directly or indirectly controls, is controlled by, or is under common control with a Party.

**Customer:** a Party ordering Products, Systems or Services from ABB.

**Contract:** a written agreement (including in a form of an Offer combined with a Purchase Order which has been acknowledged/confirmed with Order Confirmation by ABB), which incorporates by reference present GTCs, and any other document forming part thereof, such as, but without limitation, any technical specifications, drawings, calculations, data processing agreement or similar.

**GTCs:** These General Sales Terms and Conditions of ABB, also published on the following internet site of ABB: <https://new.abb.com/si/o-nas>

**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 similar forms of worldwide protection.

**Offer:** A written proposal for sale of Products, Systems and/or Services, submitted by ABB to a Customer in order to receive an Order.

**Order (also Purchase Order or PO):** A written document (and its attachments) representing Customer's request to ABB for sale of Products, Systems and/or Services or for an amendment to such Order, including any Order that is issued electronically. Order becomes binding only upon Order Confirmation issued by ABB.

**Order Confirmation:** ABB's written confirmation of acceptance of Customer's Purchase Order, thus representing binding Contract.

**Personal Data:** any data or information of an identified or identifiable natural person.

**Party:** Customer or ABB, collectively the Parties.

**Price:** The Price(s) indicated in the Order Confirmation.

**Product(s):** The good(s) specified in the Order Confirmation.

**Service(s):** The Service(s) specified in the Order Confirmation.

**System(s):** The System(s) specified in the Order Confirmation.

**Supply:** The total scope of the Order Confirmation.

**Written form** includes also any electronic form, except if provided otherwise by the Parties or under the mandatory provisions of applicable law.

## 2. STRUCTURE OF CONTRACT

Unless otherwise agreed to by the Parties, the Customer agrees that each Offer referring to the GTCs, combined with a Purchase Order and the relevant Order Confirmation from ABB, is a separate Contract, legally independent from any others. Each time the Customer submits an Order which is subject to the Order Confirmation by ABB, the relevant Supply shall be subject to the further contractual conditions for Products, Systems and/or Services indicated in the Order and in the Order Confirmation which are part of the Contract.

In case of differences between the terms of the contractual documents, those contained in the Order Confirmation and in the GTCs prevail over those contained in the Order, and those contained in the Order Confirmation prevail over those in the GTCs. Any general conditions applied by the Customer but not expressly accepted in writing by ABB, also where indicated in the Order and/or on the reverse of the Order, shall not apply.

ABB's Offer is valid only when transmitted in writing and for the period indicated in that Offer. No ABB agent or intermediary has the power to accept Orders on behalf of ABB.

The Contract is stipulated between the Parties when ABB, after receiving the Order, notifies the Customer in writing about the acceptance of the Order by sending the Order Confirmation. Upon receipt of the ABB Order Confirmation, the Customer should verify all the information provided therein; the Order Confirmation is considered accepted by the Customer if not challenged immediately in writing by the Customer. The materials and services not expressly described in the Order Confirmation will be invoiced separately.

## 3. GENERAL PROVISIONS

These ABB GTC's govern the Contract.

In case the Contract is executed in a form of a separate document and is signed by the Parties on different dates, the effectiveness shall commence on the last day of signing.

Customer accepts the Contract either expressly in writing or impliedly by fulfilling the Contract in whole or in part. No terms or conditions delivered with or contained

in Customer's quotations, acknowledgements, acceptances, specifications or similar documents will form part of the Contract, unless expressly confirmed by ABB and Customer waives therefore any right which it might have to rely on such terms or conditions.

Customer shall keep in strict confidence all ABB Data and any other information concerning ABB's or its Affiliates' business, their products and/or their technologies which Customer obtains in connection with the Products, Systems and/or Services to be provided (whether before or after acceptance of the Contract). Customer shall restrict disclosure of such confidential material to such of its employees, agents or subcontractors or other third parties on a need-to-know basis for the purpose of the receipt of the Products, Systems and/or Services provided by ABB. Customer 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 Customer and will be liable for any unauthorized disclosures.

The Parties may communicate by electronic means, with the use of information and communication technology and use of electronic (digital) signatures. Documents exchanged in electronic communication will be considered equivalent to written documents if both the identity of the sender and the authenticity of the document can be adequately ascertained.

The Parties give effect to electronic signature (e.g. Adobe Sign), provided that it is applied by authorized persons and that it enables both the content of the document and identity of the signatory to be determined with certainty, 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 Parties (unless otherwise provided under mandatory provisions of applicable law). In particular, the Parties expressly agree that any Order transmitted by electronic means and/or signed electronically will be considered to have the same binding effect as though the Order was signed by a handwritten signature and delivered in paper (physical) form.

The Customer agrees that, at the care and expense of ABB, ABB can install on the Products/Systems any technical modifications considered mandatory by ABB (for example, those necessary for safety/security reasons). The parts removed as a result of such modification become the property of ABB; the Customer declares that it has suitable authorization from the proprietor or holder of other rights, to transfer to ABB the ownership and possession of the parts removed.

## 4. PRICES

Except as otherwise agreed in writing, the Price shall be understood as including all costs of Supply according to the offered Incoterms 2020, ICC, excluding VAT and withholding tax, where applicable. Prices are subject to adjustment in the manner stated in the Offer (including by use of price escalation clauses).

In case the Customer requests changes of Supply quantity/quality/schedule after issuance of Order Confirmation, ABB has the right to update Offer terms, including extension of the delivery schedule for the reasons foreseen under Article 8 "Delivery Schedule" below and/or change the Price.

## 5. PAYMENT & INVOICING

The Price shall always be paid via bank transfer to the account designated by ABB within the contractually established dates or, unless otherwise agreed, within 30 (thirty) days from the date the invoice is issued. The transfer of sums to ABB is always at the risk of the Customer, whatever means of payment is chosen. Any agreement on or the receipt by ABB of notes or documents of credit are understood as mere facilitation for the transaction, and grants ABB the right to reimbursement of the applicable interest, costs and commissions, is subject to clearance thereof, and does not change the place of payment, which remains as indicated above. In the case of late payment, the Customer shall pay ABB statutory interest for late payment without prejudice to any further damages. When possible according to the terms of the Supply, ABB may split the invoicing of deliveries. In this case, each delivery will be billed separately, as per the contractually established payment terms. Any complaint by the Customer, including for delayed deliveries or incomplete Supply, does not give the Customer the right to suspend or delay payment.

Except as explicitly agreed otherwise by the Parties, invoicing for the delivery of Products, Systems or Services shall be done in full at shipment. Upon specific request of the Customer, the material furnished for the execution of works may be invoiced simultaneously with the invoicing of the works.

In the case that works have been performed in entirety and Customer does not sign a provisional/final acceptance protocol, ABB has the right to issue the final invoice 30 days after the works have been completed.

In the case of labor Services or on-site activities paid by consumption, ABB shall issue the relevant invoice simultaneously with the receipt of the ABB personnel time cards duly countersigned by the Customer.

## 6. SUSPENSION OF DELIVERIES

If the Customer fails to make one or more payments at the due date, or if it fails to fulfil any of its contractual obligations, then ABB has the right to suspend deliveries. ABB may also suspend deliveries in the case where the Customer's economic conditions change substantially, as in the case of the impossibility of collection from Customer's bank accounts or Customer's illiquidity, the submission of a proposal or the initiation of a pre-bankruptcy and/or bankruptcy

and/or liquidation proceeding against Customer, one or more protested bills of exchange, enforcement proceedings, establishment of pledges and/or mortgages on the Customer's assets, composition with creditors, or cessation of business. In case of ABB's reasonable doubt in Customer's ability to meet its contractual obligations or to execute payment(s), ABB shall inform the Customer thereof and shall be entitled to make the delivery and performance of ABB's contractual obligations to the Customer conditional upon Customer, within indicated deadline (no longer than 30 days): (i) making full advance payment to ABB and/or (ii) providing ABB with an unconditional and irrevocable bank guarantee for the entire unpaid Supply amount, with content thereof to the full satisfaction of ABB. In the event that the Customer does not fulfill these requirements within the specified period, ABB is entitled to terminate the Contract with immediate effect, with Customer having no right to claim any damages, and with Customer being obliged to pay for all Products, Systems and Services delivered by ABB, as well as to cover all costs that incurred by ABB during performance of contractual obligations up until the termination of Contract.

## 7. LIMITATION OF LIABILITY

To the greatest extent possible under mandatory provisions of law, the liability of ABB, its agents, employees, sub-contractors and suppliers towards the Customer for any form of direct damage, including, without limitation, liquidated damages, contractual penalty and any other kind of damages and/or compensation, envisaged by law and/or the Contract (including these GTCs) cannot in aggregate exceed 100% of the Price.

To the greatest extent possible under mandatory provisions of law, ABB shall not be required to compensate the Customer for loss of profits and/or any indirect and/or intermediate, and/or any other indirect or consequential damage, such as (without limitation) loss of sales, loss of profit, loss of contract, loss of production, loss of data, downtime or other economic or financial loss, any damages that the Customer might be obligated to pay to third parties for whatsoever reason etc.

In the case of a dispute over interpretation, the provisions of this article shall prevail over any other potentially conflicting provision contained in the Contract, including these GTCs.

## 8. DELIVERY SCHEDULE

The delivery dates run from the date of the latest among the following events:

- from the date of the agreement between the Parties on all delivery terms;
- from ABB's receipt of the advance payment for the Order, or payment security, where envisaged;
- from ABB's receipt of the technical data from the Customer or Customer designated third parties or from Customer's approval of ABB's executive drawings and plans, where envisaged;
- from ABB's receipt of the materials which need to be provided by the Customer or by a designated third party;
- from the date when the Customer receives the authorization to import the material(s) or to make the payments, where applicable.

To calculate delivery dates, weeks of 5 (five) working days, excluding public holidays, are considered. The stated delivery dates are considered automatically extended in case of unforeseen events for a period of time equivalent to the duration of the event itself. ABB is therefore not liable, in any case and for any reason, for any direct or indirect damages caused by the delivery of Products/Systems/Services later than the initially agreed date; the Customer, however, accepts delivery of the Products/Systems/Services ordered also after that date. The delivery date is further extended if the Customer does not perform its contractual obligations on time, including in particular:

- if payments are not effected timely;
- if the Customer does not provide the required data necessary at the time of scheduling, before or during processing of the Order;
- if the Customer requests changes during the processing of the Order;
- if the Customer delays delivery of material before or during the processing of the Order.

If delivery is not made for any reason arising from events independent from ABB, the delivery shall be considered as made upon delivery of simple notice on completion of the Supply.

By delivery date the Parties mean the date of ABB's issue of notice that Products/Systems are ready or notice of shipment of Products/Systems to the Customer or consignment to the carrier or shipper indicated in the Order, or notice of readiness for Product/System testing, or notice of completion of provision of Services.

The delivery dates provided in ABB's Offer are quoted based on current ABB's commitments and are subject to confirmation at the time of issuance of Order Confirmation.

## 9. DELIVERY, PACKAGING, SHIPMENT AND TRANSPORT

ABB delivers its Products, Systems and/or Services according to the agreed INCOTERMS 2020 terms of delivery. If the Customer fails to take over the Supply, ABB has the right to charge at least 1% (one percent) per month of the invoice value for storage costs to the Customer and the right to revise delivery schedule. Storage is provided at the Customer's risk. The Customer is obliged to check the Supply and report any possible shortages/deficits before accepting delivery of the Supply by the carrier, i.e. before signing the transport document as a sign of receipt, or before signing the document on acceptance of Services (as applicable). Any possible hidden defects must be notified: (i) with respect to Products/Systems, to the carrier

by registered letter, with copy to ABB, within eight days from receipt of the Products/Systems; (ii) with respect to Services, to ABB by registered letter, within eight days from execution of the Services; otherwise the Customer loses its associated rights. The return of Supply or packaging is not accepted without the prior written consent of ABB. In this case, the Supply is transported at the Customer's own risk and expense.

In case the Customer would like to exclude the packaging of Products/Systems, in the case of Products/Systems for which it is normally used, or if the Customer would like special packaging to be used, the Customer must expressly request so when placing the Order. ABB uses standard packaging materials and procedures. In case of returns, the material is always transported on behalf of the Customer and at Customer's risk and liability. ABB will notify the Customer of necessary instructions for shipment and any other related measures if so obliged by the Contract; otherwise ABB will handle the shipment at Customer's expense, without bearing any liability.

## 10. LIQUIDATED DAMAGES / DELAYS IN DELIVERY

Liquidated damages for delay are applicable only if expressly indicated in the Order Confirmation or otherwise offered by ABB. Where ABB, in the case of delay, is required to pay liquidated damages, such recourse shall be the sole remedy available for the Customer, thus expressly excluding reimbursement of any further damages.

Liquidated damages are not due when the delay in performance is attributable to an unforeseen circumstance or to an event not related to ABB's fault. Liquidated damages shall be due only when the Customer has notified ABB by registered letter about its intention to request payment of liquidated damages and shall be payable only from the date of ABB's receipt of such notification. In any case liquidated damages cannot be claimed when not demanded within 10 (ten) days from ABB's falling into delay.

The liquidated damages shall be payable at a rate of 0,05% of the Price of the part of the Supply which is in delay (excl. VAT) for each day of delay. The aggregate amount of all liquidated damages for delay are limited to the maximum amount of 5% of the total Contract Price (excl. VAT). When delay reaches such aggregate amount, the Customer and ABB will discuss new delivery schedule for delivery of the Supply. The Customer can withdraw from the Contract only once both the maximum amount of the liquidated damages under these GTCs is reached and ABB has failed to complete the Supply within the additional time contained in the revised delivery schedule.

## 11. TRANSFER OF RISK AND TITLE

Risks and costs related to the Supply shall pass to the Customer according to the agreed INCOTERMS 2020 terms of delivery. If shipment is delayed or becomes impossible due to reasons not attributable to ABB, the Supply remains in storage at the expense, risk and liability of the Customer.

The Customer shall acquire title of the Supply only upon full payment of the agreed Price.

## 12. FORCE MAJEURE

ABB shall not be considered liable for non-performance of any contractual obligation or for any delay in performance caused by acts of force majeure, including (without limitation) earthquake, fire, floods, pandemic, invasion, insurrection, revolt, orders from the civil or military authorities, mobilization, blockade, war (including in nations indirectly involved in the Supply), strikes, trade union agitation, occupation of factories, lock-out, embargo, act of competent authority, interruption of all types of transport/logistics, and any other event beyond the control of ABB, also where not specifically listed here. The performance of the obligations shall be suspended respectively for the duration of force majeure events. If the Force Majeure event exceeds a period of 90 days, ABB will have the right to terminate the Contract.

### Pricing and delivery assumption:

Price and delivery are subject to adjustment from ABB side for (i) any increase in cost or (ii) delays or difficulties in the delivery of Supply arising as a result of:

- (i) an epidemic or contagion in the country in which the Contract is performed or in any other country where labour, goods, materials or equipment required for the performance of the contract are sourced, manufactured, assembled, exported from or travel through; or
- (ii) controls, restrictions or other measures put in place by one or more competent authorities in response to such epidemic or contagion described above; or
- (iii) any measures taken by ABB to prevent or mitigate any health risk.

## 13. TECHNICAL DOCUMENTATION

All drawings and technical documentation relating to the Supply and submitted by ABB, prior or subsequent to the formation of the Contract shall remain exclusive property of the ABB (and/or its Affiliates) and can only be used for the purpose for which they were provided. It is not allowed to use such documents otherwise as stated above, to procure copies thereof, to reproduce and to disclose them to a third party without consent of ABB.

In case the Customer does not approve technical documentation within deadlines provided in the delivery/time plan, or, if no deadline is provided in the delivery/time plan, within 15 days from delivery of technical documentation to the Customer, ABB reserves the right to revise the delivery terms (including Price and

deadlines) and charge Customer for all costs associated with such Customer's delay.

The Customer acknowledges to have been informed about the safety rules relevant for the use of Products.

Except for certain specific instructions to be agreed in writing, the machines, devices and materials are compliant with IEC and/or with the sector-specific technical rules and/or current EU regulations. The weight, dimensions and illustrations of the Products provided on information-only basis correspond in essence to the technical characteristics indicated in the ABB documentation. In case of a Supply where Price is agreed with specific reference to Product weight, usage tolerances apply. ABB reserves the right to apply, at any time, such non-substantial modification to its Products, Systems or Services as it shall consider appropriate, while also informing the Customer in case these modifications may have an impact on the installation.

If technical modifications proposed by the Customer to scope of ABB's Supply (as defined in ABB's Offer or in the submitted designs) are acceptable to ABB, the Parties must agree in writing both on possible variations and modification to the Price as well as to the previously agreed delivery date. The proposed modifications do not affect the validity of the Contract.

#### 14. TESTS

The Customer has the right and the duty to notify, in due time, of its intention to attend, at its own expense, tests performed on the materials at ABB's factories. In such event, ABB will notify the Customer, with appropriate notice period, of the date on which the tests will be performed: if the Customer is not present on that date, the tests will nevertheless be performed and the results thereof will be notified to the Customer. ABB shall bear costs for these routine tests; the Customer shall however bear all travelling, accommodation and living expenses for his representatives in connection with such tests.

When the Customer requires and ABB accepts further unplanned tests, these shall be performed at the Customer's expense.

In this case, all the relevant costs, including travel, labor, transport of the inspectors, shall be borne by the Customer; these tests are performed at Customer's risk and liability, and the Customer must also assume liability for the overall safety of the workplace, in line with Article 26 below.

The Supply is considered accepted by the Customer after successful performance of the tests or lapse of the period in which the Customer could have requested such additional tests.

In case the performed tests indicate that the Supply does not comply with the Contract, ABB shall be required to cure the defects at its own expense. The repair of such defects represents Customer's sole remedy against ABB, with express exclusion of any further damages or Customer's right to terminate the Contract.

#### 15. ASSEMBLY

Except as otherwise agreed, the installation of devices and assembly of components related to the Supply are performed at the care and expense of the Customer.

Upon Customer's request, the installation may be ordered from ABB based on a separate Offer/Order. The Customer must perform necessary preparatory works in good time (including, without limitation provision of all necessary hook ups), and also ensure the safety of premises where installation is to be performed.

#### 16. WARRANTY AND CLAIMS

ABB warrants that the Supply complies with the Contract and remains free from defects during the warranty period. The warranty will expire upon lapse of the warranty period even if the goods have not been put to use for any reason. ABB will, throughout the warranty period, repair or replace and at its earliest convenience, at ABB's option and costs and at its premises, any defective part of the Supply, provided that the malfunction has not been caused by: assembly errors made by the Customer or third parties, improper operation, storage or maintenance of Supply, normal wear and tear, inexperience or negligence by the Customer or persons engaged by the Customer, transport, improper storage, Customer's failure to adopt measures to mitigate potential dysfunctions, overload with respect to the contractual limits, unauthorized or improper intervention, by actions caused by the Customer or otherwise outside ABB's control, or by force majeure. Apart from warranties provided in these GTCs and the Contract, no other implied or statutory warranty applies to the Products, Systems and/or Services supplied by ABB.

Repair or replacement will be carried out by ABB only if the Customer has performed all of its obligations up to that date. The Customer may not in any case suspend performance of its contractual obligations due to invoking the warranty. The Parties will agree on a reasonable term for repair or replacement of the defective Supply. Any Products replaced by ABB become the property of ABB. The Customer shall at its cost provide working access to the Products/Systems, dismantling and reinstallation necessary for repair or replacement. If the Customer has notified ABB and no defects are found for which ABB is liable, ABB shall be entitled to compensation for the costs it has incurred as a result of the notice on defects.

Except as otherwise agreed, the warranty period is 12 months from commissioning, but not longer than 18 months from the delivery of the Supply, even if the Supply has not been put into use.

Any claim regarding the Supply or any part thereof not compliant with the specifications or contractual documentation must be raised in writing, within a maximum of 8 days from delivery. In the case of Services, this term is 30 days from performance of the disputed Service.

For replaced parts of the Supply or parts of the Supply that underwent substantive repairs, the 12-month warranty period shall apply, with warranty terms the same as those applicable to the originally delivered Supply. For the remaining parts of the Supply, the warranty period shall be extended only for a period equal to the period during which the Supply has been out of operation as result of the defect. In any case, any and all warranty periods shall expire in following 24 months after delivery of the Supply.

In the case of hidden defects, the above deadlines run from the date of Customer's discovery of such hidden defects. ABB is not liable for hidden defects discovered after lapse of 6 months from the date of delivery of the Supply. No claims shall be accepted once the warranty period has expired, including any claims for hidden defects.

Where the claim is brought in good time and justified, ABB's obligation is limited to repair or replacement of defective Products or re-performance of the defective Service, excluding any Customer's right to seek termination of the Contract, change in Price and/or compensation of damages. In case of provision of spare parts, ABB reserves the right to provide material either from the original supplier or from supplier equivalent to the original supplier.

#### 17. SUSPENSION OF CONTRACT

Customer may suspend the performance of Contract in whole or in part by written notice to ABB. Upon receipt of such notice, ABB shall immediately suspend performance of the Contract and notify Customer of any relevant impacts the suspension may have. Customer shall pay ABB for Supply delivered/performed until suspension and for any ABB's costs incurred as a consequence of the suspension. The schedule of the Contract will be extended accordingly, as agreed in writing between the Parties. If the suspension exceeds 90 calendar days, ABB is entitled to terminate the Contract by notice in writing to the Customer.

#### 18. TERMINATION WITH IMMEDIATE EFFECT

ABB may terminate the Contract with immediate effect upon the occurrence of any of the following events:

- Customer's failure to meet its payment obligations under the terms provided in Article 4 ("Prices"), or variations thereof agreed between the Parties;
- non-compliance with Article 21 ("Intellectual Property Rights");
- failure to abide by the limitations and obligations provided in Article 22 ("Geopolitical and Shortages Environment");
- non-compliance with Article 25 ("Regulatory Compliance and Integrity");
- non-compliance with Article 27 ("Activities at Customer's premises - Safety at work") and the provisions in matters of occupational health, safety and hygiene, and environmental protection;
- change of control over the Customer;
- force majeure event lasting for more than 90 days;
- suspension of the Contract lasting for more than 90 days.

ABB shall notify the Customer of Contract termination by written notification sent by registered mail with confirmation of receipt. The termination of the Contract will be effective from the date of Customer's receipt of such notice of termination. In the case of termination, the Customer shall return to ABB all proprietary documents/materials received in connection with the Contract, including but not limited to designs, drawings and technical documentation owned by the latter, with no right to indemnity or compensation of any kind.

#### 19. TERMINATION FOR CAUSE

Each Party is entitled to terminate the Contract in case of other Party's material breach of provisions of this Contract, and provided that the breaching Party did not correct the breach within 30 (thirty) days after the non-breaching Party notified the breaching Party of the breach in writing. If the breach is not cured within this deadline, the non-breaching Party will terminate the Contract immediately by delivering written notice of termination to the breaching Party, effective on the date of the notice. However, the Customer will not be entitled to terminate the Contract if ABB has, in good faith, started to cure the breach (or non-compliance) prior to the expiry of the 30-day deadline and has not managed to finish curing the breach prior to the expiry of the 30-day deadline for reasons not attributable to ABB's fault.

#### 20. CHANGE ORDERS AND CANCELLATION

The Customer shall be entitled to request change order. The change order will become binding for ABB only once approved in writing by ABB and only after the Parties have agreed in writing on the additional value of change order, method of payment, revisions to delivery/time plan and all other aspects relating to the change order. Unless explicitly confirmed, Customer's change order is not binding for ABB. Adding or deleting of Supply modules (units) after certain stages in the production process is subject to special prices and require separate Offer to be issued by ABB.

ABB will have the right to institute a change order to the Contract in following cases: (i) if ABB was delayed in its performance as a result of Customer's acts and/or omissions or Customer's failure to fulfil its obligations; and (ii) in the event there is a change in laws or regulations after the date of the Contract or Purchase Order resulting in increasing ABB's financial liabilities relating to Contract performance or in delaying ABB's performance under the Contract. ABB will notify the Customer of such change orders as soon as possible.

Unless otherwise provided in the Contract, the Customer has the right to cancel its Order under the Contract without cause and at its sole discretion by written notice to ABB. Immediately upon receipt of such notice, ABB will stop all progress and works relating to the Supply. In this case, the Customer will pay ABB for work executed and material used by the date of cancellation, as well as other associated costs and a cancellation fee. If a separate cancellation cost breakdown is not included in the Contract, the cancellation fee payable to ABB will amount to 10% of the Price.

## 21. INTELLECTUAL PROPERTY RIGHTS

The Parties do not grant each other the right to exploit their brands, commercial names or other denominations (or those of their respective Affiliates) in any type of publication, including advertising, without the prior written consent of the other proprietor Party.

Ownership in Intellectual Property Right in Products, Systems, Services and/or all software is not affected by the Contract and remains with ABB or respective third parties, even if developed specifically for Customer's use. Each Party grants the other only the Intellectual Property Rights licenses and related rights expressly specified in the Contract. Unless provided otherwise in the individual Contract, ABB grants the Customer with the non-exclusive and non-transferable license to use the ABB software applicable to the Supply only in relation and for the purpose of the Contract, in an unaltered form and on agreed appliances, subject to a special remuneration (depending on software type) and subject to the following conditions: (i) the software may be used only in conjunction with equipment specified by ABB; (ii) the software shall be kept strictly confidential; (iii) the software shall not be copied, reverse engineered, or modified; (iv) the Customer's right to use the software shall terminate immediately when the specified equipment is no longer used by the Customer or when otherwise terminated, e.g. for breach, hereunder; and (v) the rights to use the software are non-exclusive and non-transferable, except with ABB's prior written consent.

Nothing in the Contract shall be deemed to convey to Customer any title to or ownership in the software or the Intellectual Property contained therein in whole or in part, nor to designate the software a "work made for hire", nor to confer upon any person who is not a named party to the Contract any right or remedy under or by reason of the Contract. In the event of termination of the license, Customer shall immediately cease using the software and, without retaining any copies, notes or excerpts thereof, return to ABB the software and all copies thereof and shall remove all machine-readable software from all of Customer's storage media.

If a third party asserts a copyright, patent or trademark infringement claim ("Intellectual Property Infringement Claim") against Customer alleging infringement on the Supply or part thereof, as sold and delivered by ABB to Customer under the Contract, then ABB will defend against or settle such claim for Customer and pay amounts finally awarded by a court against Customer or included in any settlement approved by ABB, provided that Customer: (a) promptly notifies ABB in writing of the claim, (b) allows ABB to control such defense or settlement, including, without limitation, any mitigation efforts; (c) does not make any admission of liability, agreement or compromise in relation to such claim, (d) take such action as ABB may reasonably request to avoid, dispute, compromise or defend such claims, and (e) reasonably cooperates with ABB and its legal counsel or other advisors in the defense, settlement, and any mitigation efforts, at ABB's expense.

If any such claim for infringement of intellectual property is brought against Customer arising from the Supply, as delivered by ABB, ABB shall have the right, but not the obligation (at no additional cost to Customer) to: (a) modify or replace the Supply; (b) obtain a license with respect to the applicable third-party intellectual property rights; (c) discontinue any sale of the Supply; (d) or terminate the Contract. Notwithstanding the above, ABB shall have no obligation to defend or settle any claim that is based on: (a) any content or combinations of Customer content with ABB's content, specifications, designs, or other requirements from Customer or its Affiliates; (b) any changes made, or combinations used after ABB's delivery of the Supply to Customer or its Affiliates; (c) use of Supply contrary to ABB's instructions; (d) any intellectual property issued after the effective date of the Contract; (e) any action by Customer or its Affiliates to settle, defend, mitigate such claims without express written direction from ABB; or (f) any continued use of the Supply after ABB has notified Customer or its Affiliates to discontinue use of the Supply as part of any settlement or mitigation actions.

Notwithstanding anything to the contrary anywhere in the Contract/GTCs, ABB's obligation addressed in the above terms in this clause: (a) shall be subject to all limitation of liabilities or maximum liabilities that may be set forth in other clauses of the Contract/GTCs, regardless of any exclusions addressed elsewhere; and (b) are ABB's exclusive obligation with regards to intellectual property infringement, and any other conflicting terms or terms addressing intellectual property infringement (including, without limitation, any statutory warranties, ABB representations, warranties or indemnifications) are not applicable.

To the extent an Intellectual Property Infringement Claim is brought against ABB or its Affiliates based on Customer's or Customer Affiliates' (a) designs, specifications or required changes to ABB standard Supply, (b) modifications made to the Supply or parts thereof, or (c) combinations used with the Supply or part thereof, the Customer will defend and settle all such claims in the same manner as ABB's obligations addressed in the preceding paragraph.

All data, information, documents, as well as the Intellectual Property Rights whether registered or not (hereinafter collectively indicated as the "Documentation"), in whatever form transmitted, remain the sole and exclusive property of ABB and if

supplied to the Customer, Documentation shall only be used to the extent necessary for performance of the Contract.

The Customer shall not use the Documentation received for reasons other than those foreseen under the Contract; the Customer shall not communicate to third parties, reproduce or license the Documentation received without the explicit prior written authorization of ABB.

The Customer shall return the Documentation received to ABB along with all copies (if any) upon simple request from ABB whenever the said Documentation is no longer necessary for the performance of the Contract and/or of for the use of the Supply, except as otherwise agreed by the Parties.

If the Customer is granted written permission from ABB and intends to use the Documentation in order to incorporate the Supply in other products/documents, the Customer shall be responsible to ensure that in the use to be made thereof, the Intellectual Property Rights of ABB and/or third parties are not breached and exclusively assumes full liability for the consequences deriving from any possible violations, keeping ABB fully indemnified from any and all kind of liability.

In any case, if the Contract is executed by ABB on the basis of the Customer's specific technical documentation, ABB assumes no liability for any possible violation of the Intellectual Property Rights of third parties and the Customer shall keep ABB fully indemnified from any and all kind of liability.

## 22. GEO-POLITICAL AND SHORTAGES ENVIRONMENT

The Parties are aware of the challenges related to outbreaks, epidemics, war (declared or undeclared), government regulations and acts of governmental authorities (including sanctions), civil unrest, and general shortages of electronic components and elements, market volatility, availability and cost of raw materials, commodities, as well as the shortage and market fluctuation of logistic/transportation availability, costs and capacities that may impact the normal business activity and cost of performance, the delivery schedule(s)/dates and/or the execution of the scope or performance of work, the impacts of which are currently unknown.

Notwithstanding anything in the specific contract to the contrary, if as a result of any of the above aforementioned events, the costs of ABB's performance increase or ABB's performance obligations are materially adversely affected or delayed, the Parties in the spirit of cooperation, will work together in good faith and within a reasonable time after the invocation of this clause, to negotiate alternative contractual terms in terms of equitable adjustments to delivery schedules/dates, pricing and/or possible reductions of the contractually owed quantity of the Supply to be delivered to the Customer.

The aforementioned shall be performed with a view to employing reasonable efforts to ensure that the Contract can be at least fulfilled in part.

Each Party waives any claim against the other Party either for direct damages and/or loss of profits and/or indirect and/or intermediate and/or consequential and/or punitive damages, penalties and/or liquidated damages arising from or anyhow connected with any of the challenges listed above.

If any dispute or difference arises between the Parties, the Parties hereto shall endeavor to settle such dispute amicably.

Any Contract, Order acceptance or Order Confirmation by ABB is entered into and made subject and conditioned to the above terms, which the Parties recognize as fundamental conditions of any such agreement within the Parties.

## 23. EXPORT CONTROL

The Customer shall comply with all legislation applicable to the trade and export of Products and technologies. The Customer must not sell or forward goods provided as part of ABB's Supply to countries where ABB prohibits sales and/or delivery, as indicated in the Contract. The supply of Products for export is possible only after ABB receives the necessary statement regarding end-use of the Products.

ABB reserves the right to withdraw the Offer(s) and/or refrain from performing existing Order(s) and/or terminate the relevant Contract(s):

- if ABB does not receive the end-use declaration before the Order is placed or together with the Order; or
- if ABB does not receive a declaration of non-nuclear or military end-use of the Products; or
- if the end-use of the Products is unclear.

## 24. PROTECTION OF PERSONAL DATA

Each Party shall comply with all applicable data protection laws and regulations with respect to the Personal Data disclosed between the Parties.

Each Party shall apply appropriate physical, technical and organizational measures to ensure a level of security of Personal Data appropriate to the respective risk and the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services.

The Customer will use all reasonable endeavors to deliver the applicable ABB's Privacy Notice made available at [www.abb.com/Privacy](http://www.abb.com/Privacy) Notices to its employees and other individuals that will be involved in ABB's delivery of Supply and whose Personal Data are collected.

The Customer agrees that it will not withhold or delay its consent to any changes to this Article 24 which in ABB's reasonable opinion are required to be made in order to comply with applicable data protection laws and regulations and/or with guidelines and advice from any competent supervisory authority, and agrees to implement any such changes at no additional cost to ABB.



The Customer acknowledges that the processing of Personal Data in accordance with the Contract may require the conclusion of additional data processing or data protection agreements with ABB or its Affiliates. To the extent such additional agreements are not initially concluded as part of the Contract, the Customer, its relevant Affiliates or subcontractors shall upon ABB's request promptly enter into any such agreement(s), as designated by ABB and as required by mandatory law or a competent data protection or other competent authority.

## 25. REGULATORY COMPLIANCE AND INTEGRITY

The Supply subject to this Contract may not be directly or indirectly used in any way in connection with the design, production, use or storage of chemical, biological, or nuclear weapons or their delivery systems, or any other military applications.

The Supply must not under any circumstances be used in connection with the operation of any nuclear facilities including but not limited to nuclear power plants, nuclear fuel manufacturing plants, secondary or related facilities or equipment, etc. Any such nuclear use requires full protection against nuclear liability for the benefit of ABB and its sub-suppliers in accordance with conditions to be determined by ABB.

The Parties agree to remain fully compliant with all applicable trade and customs laws, regulations, instructions, and policies, including, but not limited to, satisfying all necessary clearance requirements, export and import licenses, permits 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 Products, hardware, software and technology. The Parties also acknowledge that such provisions and regulations may change from time to time and are applicable to the Contract at the time of execution. The Parties will adhere to all such provisions and regulations and cooperate with the competent authorities accordingly. Parties, respectively, are not obliged to perform any act, if such act is in breach of the applicable regulatory regime.

The Customer acknowledges that the supply of the Supply may be subject to domestic, foreign and/or international statutory provisions and regulations regarding export control and, without export or re-export authorizations from the competent authorities, may not be sold, leased or otherwise transferred or used for a purpose other than that agreed upon.

For avoidance of doubt, any delay in obtaining required trade compliance document or evidence of fulfillment of obligations under this clause shall suspend performance of this contract by ABB. If an export license is not granted or, if once granted, is thereafter revoked or modified by the competent authorities, this contract may be canceled by ABB without liability for damages of any kind resulting from such cancellation.

Customer represents and warrants that no part of the Supply, material, equipment, component, parts, technology, or services that are included in, incorporated into, or provided in connection with the Supply shall be subject to final, direct or indirect, delivery in any country or region that is subject to a comprehensive embargo maintained by any government authority that may impose penalties or other measures against ABB (a Relevant Government Entity). If any of the Supply is or will be subject to export restrictions, it is Customer's responsibility to promptly inform ABB in writing of the particulars of such restrictions.

The Customer represents and warrants that it is not a person subject to economic or financial sanctions imposed by a Relevant Government Entity (i.e. a Sanctioned Person), including any person included on the US Specially Designated Nationals (SDN) and Blocked Persons List. Customer acknowledges that Sanctioned Persons may include persons who are not explicitly included on any sanctions list maintained by a Relevant Government Entity, but also persons who are directly or indirectly owned 50 percent or more in the aggregate by one or more Sanctioned Persons. Customer further represents and warrants that no Sanctioned Person has any property interest, financial interest, or other interest in the Supply and that the provision of the Supply shall not involve the transferring, paying, exporting, or withdrawing of any property or interests in property of any Sanctioned Person.

At ABB's request, in evidence of undertakings under this section Compliance and Integrity, the Customer shall provide a Letter of Assurance and End-User Statement in a form reasonably satisfactory to ABB.

Each Party warrants that it 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 domestic, international laws or domestic laws with international applicability (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.

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

ABB has established reporting channels where Customer and its employees may report suspected violations of applicable laws, policies or standards of conduct (Web portal: [Reporting channels — ABB Group \(global.abb\)](#)) and Customer shall ensure that such reporting channels are used to report any suspected violations.

Any violation of an obligation contained in this Article 25 is a material breach of the Contract and entitles 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, Customer shall, without any limitations, indemnify and hold harmless ABB (and any affected ABB Affiliate) for all liabilities, damages, cost or expenses incurred as a result of any such violation and/or termination of the Contract, or arising from export restrictions concealed by Purchaser.

## 26. PERFORMANCE OF ORDINARY AND SPECIAL MAINTENANCE

The activities of installation, commissioning rollout, maintenance and repair may be executed solely by ABB personnel or by personnel adequately trained and authorized by ABB in compliance with all safety rules. Where ABB is not engaged for the installation, commissioning rollout, maintenance and repair work, ABB cannot in any way guarantee that the Products, Systems or Services supplied by ABB are fit for use.

## 27. ACTIVITIES AT CUSTOMER'S PREMISES - SAFETY AT WORK

Customer is responsible for taking care of all necessary precautions regarding occupational health and safety (OHS). In case ABB observes dangerous situation in terms of OHS, it has the right to stop or suspend works until site is safe from OHS point of view. ABB has the right to charge separately this idle time expenses (such as waiting time and additional trips) to the Customer.

In case any personal safety risk or OHS risk occurs for travel or work at site, ABB keeps the right to withdraw from all commitments outlined in the Offer/Contract and/or not to send ABB employee to site or not to execute in entirety or partly site works. Such case shall not be considered as breach of Contract. In case of termination of the Contract due to OHS concerns, the Customer accepts that ABB has no responsibility or liability for any damages.

In the case of activities at Customer's premises, the Customer is required to provide to ABB with all the following:

- the full safety of the plant at Customer's premises and/or of the Customer site at which ABB activities are to be undertaken;
- free access, sufficient space as well as, in general, whatever may be necessary and possible, so that ABB may perform its duties, and (including in particular, but without limitation) the supply of electrical power and the availability of lifting equipment for the use of the equipment necessary for the execution of the activities at Customer's premises.

The Customer shall also give ABB prior notice of all the risks present in the work area and implement and guarantee all related and necessary prevention and protection measures and the emergency plans, so that ABB personnel is not exposed to the aforementioned risks and dangers and so that health and safety at work is adequately safeguarded.

The Customer shall notify ABB in writing, in the name of its Safety Manager responsible for the activities to be undertaken and responsible to meet the ABB personnel before the beginning of the operations, of all the safety rules and regulations pertaining to the working environment.

In the interest of both Parties and in order to provide safe working conditions, before activity begins, the Customer must provide ABB personnel with all information regarding the Customer and the safety conditions in the areas of the plant where they are to work.

ABB personnel may refuse to begin the activities until they are adequately informed on the safety conditions.

In any case, it is the Customer's duty to prevent ABB personnel from accessing the Customer's site and the relative plant until full completion of all the operations intended to assure the absolute safety of work on the plant or part of the plant involved in the operations. ABB operations shall always be performed with the continuing assistance of the Customer's expert personnel and with the use of all protection devices, including special equipment suitable for safeguarding health and safety.

In the case of accident or injury to ABB personnel, the Customer shall grant ABB free access to the accident site to ascertain the relevant cause(s).

## 28. GOVERNING LAW AND JURISDICTION

The Contract is governed by Slovenian law, with the exclusion of commercial customs and practices (trade usages), conflict of law rules of the private international law and provisions of the Vienna Convention on Contracts for the International Sale of Goods of 1980. Any dispute regarding the validity, interpretation, execution and/or termination of the Contract, the GTCs, the Offer, Order and/or the Order Confirmation shall be referred to the exclusive jurisdiction of the courts in Ljubljana, Slovenia.

## 29. ASSIGNMENT

The Contract binds and applies to the general legal successors of ABB and the Customer. However, the Customer may not assign or transfer the Contract or any of its rights hereunder in whole or in part, directly or indirectly, without the prior written consent of ABB. ABB may assign, transfer or subcontract its rights and obligations to another ABB Affiliate.

## 30. NOTICES

All notices, requests, demands and other communications under the Contract shall be in writing and shall be deemed to have been duly given (i) if delivered by hand and receipted for by the Party to whom said notice or other communication shall have been directed, or (ii) mailed by certified or registered mail with postage prepaid.

### **31. SEVERABILITY AND AMENDMENTS**

If parts or certain clauses of the present GTCs or those of the Contract are held to be invalid or otherwise unenforceable, the remainder or the other clauses of the GTCs and/or Contract shall still apply, as unamended, and Parties shall replace the invalid and unenforceable parts with such valid and enforceable provisions which are as near as possible to their common business intention.

Any amendment to the Contract must be in written form.

The Contract (incorporating these GTCs), and any documents incorporated into an Order Confirmation or other agreement (including by reference) constitute the entire agreement between the Parties and replace any prior agreement (written or verbal, express or implied,) between them with regard to its subject.

### **32. WAIVER AND RELATIONSHIP OF THE PARTIES**

Any omission or delay by either Party in the course of exercising the rights arising from the Contract may not be construed as a waiver of any right and exercising specific rights arising from the Contract or exercising these rights in part does not exclude any further exercising of rights or exercising such rights in a different manner or exercising any other possible rights.

Each Party acts as an independent contractor and nothing in these GTCs or the Contract shall render the Party an employee, agent or partner of the other Party and the Party shall not hold itself out as such.