

# ABB GENERAL TERMS AND CONDITIONS

## SALE OF PRODUCTS AND / OR SERVICES

(2011 – VER. 1)

### 1. Definitions

- 1.1. ABB: means the legal entity of the ABB Group providing Products and/or Services to Purchaser under the Contract.
- 1.2. Affiliate: means any entity, whether incorporated or not, which presently or in the future, directly or indirectly owns, is owned by or is under common ownership with, by virtue of a controlling interest of 50 % or more of the voting rights or the capital, a party to the Contract.
- 1.3. Contract: means the terms and conditions contained in these General Terms and Conditions (“GTC”), together with any special terms and conditions agreed upon in writing between ABB and Purchaser with regard to supply of the Products and/or Services, including a purchase order issued by Purchaser provided such purchase order has been acknowledged by ABB (the “Order Acknowledgement”).
- 1.4. Contract Price: means the price for supply of the Products and/or Services as finally agreed upon between ABB and Purchaser in the Contract.
- 1.5. Gross Negligence: means any act or omission on the part of ABB which is a result of a deliberate, conscious and willful disregard of any consequences of such act or omission and which causes grave and harmful consequences to person and property.
- 1.6. Products: means equipment, parts, material, supplies, software and other goods or products as exhaustively specified in the Order Acknowledgement.
- 1.7. Purchaser: means the entity or person to which ABB is providing Products and/or Services under the Contract.
- 1.8. Services: means all labor, advisory, technical and engineering, installation, consulting or other services as exhaustively specified in the Order Acknowledgement.

### 2. General

- 2.1. These GTC apply to any offer, sale or supply of Products and/or Services by ABB.
- 2.2. These GTC shall apply and have priority over any other conditions, notwithstanding anything to the contrary in Purchaser’s request for quotation, purchase order, any other document or agreement, unless deviations from these GTC are explicitly agreed upon in writing between authorized representatives of ABB and Purchaser or are set forth in the Order Acknowledgement.

### 3. Prices

- 3.1. Unless specified otherwise in writing, all prices are deemed to be in United States Dollars and with respect to Products Ex works pursuant to INCOTERMS 2010.
- 3.2. Except for taxes levied on ABB on net income, prices are exclusive of all taxes, duties, fees, interest or other charges of any nature, including but not limited to value added taxes, sales, transfer, turnover, use or any other taxes, import, export, customs or any other duties or fees, administrative fees, or any

other similar charges (hereinafter referred to as “Taxes”). Any such Taxes shall be borne and paid by Purchaser and if assessed on ABB, Purchaser shall reimburse ABB, including, if any, penalties, costs, assessments and interest relating thereto.

- 3.3. All travel expenses incurred with the provision of Services shall be for the account of Purchaser. Travel expenses include: (a) fares for journey by rail, sea, air, car and/or bus; (b) carriage, freight and customs duties as well as insurance due in connection with personal effects, instruments and tools required for the Services, including necessary costs for overweight on air freight; and (c) all out-of-pocket expenses incurred by ABB for the Services ordered by Purchaser, such as internet use, facsimile and telephone calls.

### 4. Payment

Except as otherwise agreed by ABB in writing, the following payment terms shall apply:

- 4.1. Payment shall be made in full, free and clear of all deductions, withholding or offset, within 30 calendar days from the date of invoice. Payment shall only be deemed to have been effected when ABB’s account has been fully and irrevocably credited.
- 4.2. If Purchaser deducts or withholds any Taxes, Purchaser shall pay additional amounts to ABB to cause the amounts ABB actually receives net of deducted or withheld Taxes to equal the full Contract Price. Purchaser shall provide to ABB within one month accurate official receipts from the appropriate governmental authority for deducted or withheld Taxes.
- 4.3. In case payment of invoices by Purchaser is delayed, ABB shall be entitled to charge a late payment charge of 1.5 % (one point five percent) or the maximum permitted by law whichever is less on any amount overdue for payment for each calendar month or fraction thereof and ABB’s collection efforts including reasonable attorney fees until payment is received.

### 5. Delivery and Performance of Services

- 5.1. Delivery of the Products shall be Ex works pursuant to INCOTERMS 2010.
- 5.2. Delivery of the Products in installments, partial delivery or delivery in advance to the delivery schedule shall be permitted.
- 5.3. Delivery times are approximate and are dependent amongst other on receipt of information required by ABB.
- 5.4. ABB shall retain a lien over the Products until Purchaser has in respect of such Products:
  - (a) made payment in full (in cash or cleared funds); and
  - (b) paid all other sums which are or which become due to ABB under the terms of the Contract.
- 5.5. In the event ABB is delayed in performing any of its obligations under the Contract due to any cause not directly and solely attributable to ABB, ABB shall have the right to an extension of time and compensation for additional cost resulting from such delay.

5.6. If any Products cannot be delivered to or received by Purchaser when ready due to any cause not directly attributable to ABB, ABB will notify Purchaser and then may ship Products to a storage facility, including a facility within the place of manufacture, or to an agreed freight forwarder. If ABB places Products in storage or if Products are detained at any port, the delivery of the Products shall be deemed to be completed in accordance with the Contract, and the following conditions shall apply: (i) all risk of loss or damage shall immediately pass to Purchaser if they had not already passed; (ii) any amounts otherwise payable to ABB upon delivery or charges incurred by ABB, such as for preparation for and placement into storage, handling, inspection, preservation, insurance, storage, demurrage, removal and any Taxes, shall be payable by Purchaser upon submission of ABB's invoices; and (iii) when conditions permit and upon payment of all amounts due hereunder, ABB shall resume delivery of Products to the originally agreed point of delivery.

5.7. Unless claims for shortages, damage or other errors or deviations of or to the Products are made in writing by Purchaser to ABB within 5 (five) calendar days of delivery, Purchaser shall be deemed to have accepted quantity and quality of the Products delivered by ABB as being in accordance with the Contract.

5.8. Unless any claims for non-conformity of the Services are made in writing by Purchaser to ABB within 5 (five) calendar days of completion of the Services, Purchaser shall be deemed to have accepted the Services provided by ABB as being in accordance with the Contract.

5.9. For ABB's performance of the Services, Purchaser shall provide at its costs:

5.9.1. ABB's personnel with free access to the work site, working permits or any other entry, exit or residence permits necessary for ABB to perform its obligations under the Contract;

5.9.2. ABB's personnel with assistance to obtain visas;

5.9.3. ABB with assistance regarding any customs formalities;

5.9.4. ABB with information regarding local laws and working conditions;

5.9.5. necessary fuel, lubricants, water, electricity, compressed air and cleaning facilities;

5.9.6. air-conditioned facilities with available potable water for ABB's personnel.

5.10. If Purchaser provides or requests ABB to install, assemble, maintain, service or repair any non-ABB parts, ABB reserves the right to reject such request and to terminate the Contract or part thereof. In the event ABB agrees to Purchaser's request, Purchaser agrees to save, indemnify and hold harmless ABB against any and all losses, claims, expenses, liabilities, damages and costs whatsoever caused by or related to, whether directly or indirectly, the non-ABB parts.

## 6. Warranty

### 6.1. Product Warranty

6.1.1. ABB warrants that the Products shall be free of defects in title, material and workmanship for a period of 12 (twelve) months from delivery (the "Product Warranty Period").

6.1.2. If the Products do not meet the warranty set forth in Clause 6.1.1, Purchaser shall promptly, however at the latest within 7 (seven) calendar days after Purchaser became aware or should have become aware thereof, and in any event on or before the expiry of the Product

Warranty Period, notify ABB in writing. If Purchaser fails to notify ABB according to the foregoing, it loses its right to have the defect remedied and to submit any claim related to such defect. Upon timely notification, ABB shall, at ABB's option, repair or replace the defective Products. Purchaser shall bear the costs of access (including removal and replacement of systems, structures or other parts of Purchaser's facility), dismantling, decontamination, reinstallation and transportation of Products to ABB and back to Purchaser.

6.1.3. The warranty period for Products that have been repaired or replaced shall be 6 (six) months from the date when the repaired or replaced part has been placed in service.

6.1.4. Under no circumstances shall the warranty period of any Product or part of such Product, irrespective of whether as originally supplied or as repaired or replaced, extend for a period in excess of 18 (eighteen) months following the date of commencement of the Product Warranty Period of the originally supplied Product.

6.1.5. ABB does not warrant Products (irrespective of whether as originally supplied or as repaired or replaced):

(a) against normal wear and tear;

(b) used in a manner contrary to ABB's instructions;

(c) comprising of material provided by or a design specified by Purchaser; or

(d) repaired, maintained, or modified against or otherwise not in compliance with ABB's recommendations or instructions.

### 6.2. Service Warranty

6.2.1. ABB warrants that the Services shall be free of defects in workmanship for a period of 3 (three) months after completion of the Services (the "Service Warranty Period").

6.2.2. If the Services do not meet the warranty set forth in Clause 6.2.1, Purchaser shall promptly, however at the latest within 7 (seven) calendar days after Purchaser became aware or should have become aware thereof, and in any event on or before the expiry of the Service Warranty Period, notify ABB in writing. If Purchaser fails to notify ABB according to the foregoing, it loses its right to have the Services re-performed and to submit any claim related to such defect. Upon timely notification, ABB shall re-perform the Services in accordance with the conditions set forth in these GTC.

6.2.3. The warranty period for Services that have been re-performed shall be 1 (one) month from the date of completion of the re-performed Services.

6.2.4. Under no circumstances shall the warranty period of any Services, including re-performed Services, extend for a period in excess of 6 (six) months following the date of commencement of the Service Warranty Period of the originally performed Services.

6.3. For any warranty claim, Purchaser shall have the responsibility to establish that its claim is covered by ABB's warranty.

6.4. The warranties specified under this Clause 6 are exclusive and in lieu of all other warranties of quality, quantity and performance, whether written, oral or implied. Any other warranty is hereby disclaimed. The remedies stated herein constitute Purchaser's exclusive remedies and ABB's entire liability for any breach of warranty. ABB does not warrant, neither expressly nor

impliedly, the Products' or Services' merchantability or fitness for a particular purpose.

## 7. Limitation of Liability

- 7.1. In no event shall ABB, its suppliers, sub-contractors, employees and Affiliates, be liable for any losses or damages that are special, indirect, incidental, consequential or punitive, whether in contract, warranty, tort, negligence, strict liability or caused otherwise, including but not limited to, loss of actual or anticipated profits or revenues, loss of use of the Products, costs of substitute products, costs of capital, downtime costs, delays and claims of Purchaser's customers or any other third party for any damages.
- 7.2. In no event shall ABB, its suppliers, sub-contractors, employees and Affiliates, be liable for any damage to equipment or property caused by the Products after delivery.
- 7.3. In the event that the validity of the Contract is less than 1 (one) year, the maximum liability of ABB, its suppliers, sub-contractors, employees and Affiliates, whether in contract, warranty, tort, negligence, strict liability or caused otherwise, with respect to any and all claims connected with the Contract, shall in no case exceed the lesser of the Contract Price or the price allocable to the Products or parts thereof or Services which give rise to the claim.
- 7.4. In the event that the validity of the Contract is more than 1 (one) year, the maximum liability of ABB, its suppliers, sub-contractors, employees and Affiliates, whether in contract, warranty, tort, negligence, strict liability or caused otherwise, with respect to any and all claims connected with the Contract, shall in no case exceed the lesser of the annual average Contract Price or the price allocable to the Products or parts thereof or Services which give rise to the claim.
- 7.5. ABB's liability shall terminate upon the expiration of the applicable warranty period.
- 7.6. The limitation of liability as defined in this Clause 7 shall prevail notwithstanding anything to the contrary in any other provision in the Contract.
- 7.7. If Purchaser is supplying Products to a third party, Purchaser shall require the third party to agree to be bound by this Clause 7. If Purchaser does not obtain such agreement for ABB's benefit, Purchaser shall indemnify, defend and hold ABB harmless from and against any and all claims made by any third party in excess of the limitations and exclusions of this Clause 7.

## 8. Restriction on export and use of Products and/or Services

- 8.1. Purchaser acknowledges and agrees that any supply of Products and/or Services shall be subject to all applicable domestic and/or foreign laws and regulations regarding export control, which shall be applicable to the Contract according to the wording valid at the time. Purchaser shall neither directly nor indirectly export, re-export or import, any supply from or provided by ABB to any jurisdiction for which an import or export license or any other license, permit, consent or approval ("Approval") is required without first obtaining such Approval. Purchaser shall undertake that all third parties receiving such supply from Purchaser comply with this requirement.
- 8.2. The Products and/or Services are provided on strict condition that:
  - (a) the Products and/or Services are solely for civil use;
  - (b) the Products and/or Services are not to be supplied to any jurisdiction, whether directly or indirectly, or for any application where such supply or application is prohibited by any applicable law or regulation; and

- (c) the Products and/or Services will not in any way be installed, used or applied in or in connection with the planning, construction, maintenance, operation or use of (i) any nuclear facilities, including, but not limited to, nuclear power plants, nuclear fuel manufacturing plants, uranium enrichment plants, spent nuclear fuel stores or research reactors, (ii) any missile technology or chemical or biological weapons or applications, or (iii) flight, navigation or communication of aircraft or aircraft ground support equipment.

8.3. Purchaser must not re-sell nor otherwise supply in whatsoever way Products to any third party of which Purchaser knows or is supposed to know that it intends to use the Products in any way violating Clauses 8.1 and/or 8.2.

8.4. If requested, Purchaser shall provide ABB with an end-user certificate signed by Purchaser's authorized representative, which shall be subject to ABB's reasonable approval, and confirming that the end-user shall comply with Clause 8.2, or any other information requested by ABB. Until it has received such certificate or information, ABB shall be entitled to suspend the performance under the Contract. The end-user certificate shall form part of the Contract, and any breach by Purchaser or any for whom Purchaser is liable (which shall, without limitation, include the end-user) of any of the provisions in Clause 8.2, shall be deemed a material breach of the Contract by Purchaser, and shall entitle ABB to terminate the Contract forthwith by notice to Purchaser. In the event of such termination or otherwise, Purchaser shall compensate ABB for any damage and loss sustained as a result of such breach of the Contract and shall keep ABB, and any of its Affiliates, and their respective officers, directors, and employees indemnified against any claims and liabilities arising out of such breach.

## 9. Intellectual Property Rights

9.1. Any patent, software, design, copyright, trademark or other intellectual property right ("IPR") being part of the Products and/or Services, whether owned or held by limited right, registered or not, is and shall remain the sole and exclusive property of ABB or its Affiliates. Purchaser will not acquire any ownership right or ownership title in such IPR. Purchaser is hereby granted with a non-exclusive, non-transferable, limited license to use the IPR subject to the following: (i) The IPR may be used only in conjunction with equipment specified by ABB; (ii) the IPR shall be kept strictly confidential; (iii) the IPR shall not be copied, reverse engineered, or modified; and (iv) Purchaser's right to use the IPR shall terminate immediately when the specified equipment is no longer used by Purchaser or when otherwise terminated.

9.2. In case Products and/or Services contain any software owned by a third party, license terms and conditions as determined by such third party governing such software shall prevail over these GTC with regard to their subject. In case such license terms and conditions are not provided to Purchaser by ABB, Purchaser is obliged to ask the third party owning the software contained in the Products and/or Services for the applicable license terms and conditions. In any case, Purchaser is obliged strictly to comply with such third party license terms and conditions.

9.3. In case Purchaser becomes aware or should have become aware of any claim of infringement or allegation of infringement of third party IPR, Purchaser shall immediately notify ABB in writing thereof, failing which ABB shall have no obligations to indemnify or defend Purchaser against the claim concerned nor any other obligation with regard to such third party IPR infringement.

9.4. Upon receipt of such timely notification by Purchaser, ABB may at its sole discretion decide:

9.4.1. at its own cost to conduct negotiations for the settlement of any claim of infringement or allegation of infringement and any litigation that may arise therefrom, to defend Purchaser or to indemnify Purchaser. Purchaser shall not make any admission which might be prejudicial to ABB. Purchaser shall, at the request of ABB, provide all reasonable assistance and information to ABB for the purpose of contesting the claim and conducting negotiations and litigation for the settlement thereof, and shall be compensated by ABB for all reasonable costs incurred in so doing;

9.4.2. to procure the right to continue use of the Products;

9.4.3. to modify the infringing Products to make them non-infringing;

9.4.4. to replace the infringing Products with non-infringing functional equivalents; or

9.4.5. to remove the infringing Products and refund the purchase price.

9.5. ABB's obligations established in Clause 9.4 shall only apply provided that all of the following conditions (a)–(c) are satisfied.

(a) The claim arises out of the design, if any, manufacture of the Product or Purchaser's use of the Product.

(b) The infringement or allegation of infringement was not caused by any use of the Product

(i) which is unlawful or in breach of the Contract,

(ii) which is other than for the purpose indicated in the Contract or reasonably to be inferred from the Contract,

(iii) which is in association or combination with any other product not supplied by ABB, unless such association or combination was disclosed to and approved in writing by ABB prior to the date of the Contract,

(iv) which comprises any modifications or alterations to the Products not approved in writing by ABB prior to the date of the Contract.

(c) The infringement or allegation of the infringement was not caused by a Product implementing any instructions contrary to or used against ABB's recommendations.

9.6. This Clause 9 states ABB's entire liability for indemnification for third party IPR infringement by the Products.

## 10. General Indemnity

Purchaser, on behalf of itself and its successors, agrees to save, indemnify and hold harmless ABB against any and all losses, claims, expenses, liabilities, damages and costs whatsoever for: (i) personal injury to or death of any employee of Purchaser or any third party; and (ii) loss or damage to any property of Purchaser or any third party, except in the event such personal injury, death, loss or damage is a direct result of ABB's Gross Negligence.

## 11. Changes

Each party may at any time propose changes in the schedule or scope of Products and/or Services in the form of a draft change order. Some changes requested by Purchaser may require analytical or investigative work to evaluate the change, and this evaluation work may be charged to Purchaser at prevailing rates. The parties may mutually agree on the length of time within which a decision shall be made regarding the change. If mutually agreed, the changes will be documented in writing by authorized representatives of each party, along with any applicable adjustments in the Contract Price or schedule. ABB is not obligated to proceed with the changed schedule or scope until both parties agree in writing. Unless otherwise agreed by the parties, pricing for additional

work arising from changes in laws, rules and regulations shall be at time and material rates.

## 12. Force Majeure

Neither party shall be liable for any loss, damage, detention, failure or delay in performing its obligations under the Contract to the extent directly or indirectly caused by or arising from an event of Force Majeure, which shall include but not be limited to acts of God, acts (or failures to act) of governmental authorities, fires, severe weather conditions, earthquakes, strikes or other labor disturbances, floods, war (declared or undeclared), terrorists acts or acts of terrorism, epidemics, civil unrest, riots, acts or omissions by sub-contractors caused by any circumstances referred to in this Clause 12, or other causes beyond its reasonable control. The delivery date shall be extended for a period equal to the time lost by reason of delay plus such additional time as may be reasonably necessary to overcome the effect of the delay. ABB shall be entitled to adjust the Contract Price and to be reimbursed by Purchaser for all costs reasonably incurred due to Force Majeure, including but not limited to costs for securing, protecting and storing the Products and costs for mobilization and demobilization of personnel and equipment.

## 13. Confidentiality

13.1. In connection with the Contract, ABB and Purchaser (as to information disclosed, the "Disclosing Party") may each provide the other party (as to information received, the "Receiving Party") with Confidential Information. "Confidential Information" means: (i) all pricing for Products and/or Services; (ii) all terms of the Contract; (iii) all information that is designated in writing as "Confidential" or "Proprietary" by the Disclosing Party at the time of written disclosure; and (iv) all information that is orally designated as "Confidential" or "Proprietary" by the Disclosing Party at the time of oral disclosure and is confirmed by the Receiving Party to be "Confidential" or "Proprietary" in writing within ten calendar days after oral disclosure. The obligations of this Clause 13.1 shall not apply as to any portion of the Confidential Information that: (i) is or becomes generally available to the public other than from disclosure by the Receiving Party, its representatives or its Affiliates; (ii) is or becomes available to the Receiving Party, its representatives or Affiliates on a non-confidential basis from a source other than the Disclosing Party when the source is not, to the best of the Receiving Party's knowledge, subject to a confidentiality obligation to the Disclosing Party; (iii) is independently developed by the Receiving Party, its representatives or Affiliates, without reference to the Confidential Information; (iv) is required to be disclosed by law, a valid legal process or a government agency; or (v) is approved for disclosure in writing by an authorized representative of the Disclosing Party.

13.2. The Receiving Party agrees: (i) to use the Confidential Information only in connection with the Contract and permitted use(s) and maintenance of Products; (ii) to take reasonable measures to prevent disclosure of the Confidential Information, except to its employees, agents or financing parties who have a need to know to perform its obligations under the Contract or to use and maintain Products; and (iii) not to disclose the Confidential Information to a competitor of the Disclosing Party. The Receiving Party agrees to obtain a commitment from any recipient of Confidential Information to comply with the terms of this Clause 13.2. Confidential Information shall not be reproduced without the Disclosing Party's written consent, and the Receiving Party shall return all copies of Confidential Information to the Disclosing Party upon request, except to the extent that the Contract entitles the Receiving Party to retain the Confidential Information. ABB may also retain one copy of Purchaser's Confidential Information until all its potential liability under the Contract terminates.

- 13.3. If either party or any of its representatives or Affiliates is required by law, legal process or government agency to disclose any Confidential Information, that party agrees to provide the Disclosing Party with prompt written notice to permit the Disclosing Party to seek an appropriate protective order or agency decision or to waive compliance by the Receiving Party with the provisions of Clause 13.2. In the event that efforts to secure confidential treatment are unsuccessful, ABB may lawfully revise the Confidential Information to make it nonproprietary or to minimize the loss of its proprietary value.
- 13.4. Purchaser shall not disclose Confidential Information to ABB unless it is required to do so to enable ABB to perform its work under the Contract. If Purchaser does disclose Confidential Information, Purchaser warrants that it has the right to disclose the information, and Purchaser shall indemnify and hold ABB harmless against any claims or damages resulting from improper disclosure by Purchaser.
- 13.5. As to any individual item of Confidential Information, the restrictions of this Clause 13 shall expire the earlier of 5 (five) years after the date of disclosure or 3 (three) years after termination or expiration of the Contract.
- 13.6. This Clause 13 does not supersede any separate confidentiality or nondisclosure agreement signed by the parties.

#### 14. Termination and Suspension

- 14.1. In case payment of invoices by Purchaser is delayed, ABB shall be entitled to suspend performance and delivery. Any cost incurred by ABB in relation to such suspension (including but not limited to storage costs) shall be paid by Purchaser. The delivery date shall be extended for a period equal to the time lost by reason of suspension plus such additional time as may be reasonably necessary to overcome the effect of the delay.
- 14.2. If, in ABB's reasonable opinion, security or safety of ABB's personnel, or the safe performance of Services is imperiled by security concerns (including but not limited to inability to obtain adequate security protections), local conditions, war (declared or undeclared), armed conflict or threatened conflict, civil unrest or riot, terrorist acts or threats, threat to safety or well-being of Purchaser's facility or personnel or ABB's persons or interests, the presence of or threat of exposure to hazardous materials, or unsafe working conditions, ABB may, in addition to other rights and remedies available to it, remove some or all of its personnel from the site, suspend performance of all or any part of the Contract, and/or transfer such performance and supervise it from an alternate location determined by ABB. Purchaser shall assist in any evacuation of ABB's personnel from Purchaser's site. The delivery date shall be extended for a period equal to the time lost by any reason referred to in this Clause 14.2 plus such additional time as may be reasonably necessary to overcome the effect of the delay. ABB shall be entitled to adjust the Contract Price and to be reimbursed by Purchaser for all costs reasonably incurred due to any reason referred to in this Clause 14.2.
- 14.3. ABB shall have the right to require full or partial payment in advance or shall be entitled to suspend or terminate the Contract forthwith by notice:
- 14.3.1. if Purchaser becomes insolvent, commences proceedings for its winding up, is declared bankrupt, commences arrangement with its creditors or makes an assignment for the benefit of its creditors or files for protection from creditors under any bankruptcy or insolvency laws;
- 14.3.2. if any representation or warranty made by Purchaser herein or in any document or certificate furnished by

Purchaser in connection herewith proves to be incorrect in any material respect; or

- 14.3.3. if Purchaser materially fails to comply with any terms of the Contract or if it otherwise is unable to pay the Contract Price as it falls due or if at any time ABB reasonably determines that Purchaser's financial conditions do not justify the continuation of ABB's performance.
- 14.4. If a delay is caused by Force Majeure and extends for a period of more than 6 (six) months and the parties have not agreed upon a revised basis for continuing the work at the end of the delay, including adjustment of the Contract Price, then either party upon 30 (thirty) calendar days written notice, may terminate the Contract with respect to the undelivered Products to which title has not passed yet and/or Services which have not been performed yet, whereupon Purchaser shall promptly pay ABB its termination charges determined in accordance with ABB's standard accounting practices upon submission of ABB's invoices therefore.
- 14.5. If ABB terminates the Contract based on the foregoing, Purchaser shall pay ABB for all Products and/or Services completed or partially completed before the effective date of termination, and ABB shall be entitled to recover any costs, expenses, loss or damage reasonably incurred as a result of such termination, including but not limited to expenses for repossession, fee collection or costs of storage during suspension.
- 14.6. Purchaser shall have the right to terminate the Contract in case of a material breach of the Contract by ABB, provided that Purchaser has notified ABB immediately in writing of such breach and ABB has failed to cure such breach or to commence to cure such breach within 60 calendar days after receipt of such notification.
- 14.7. Purchaser shall have the right to terminate the Contract forthwith by notice if ABB becomes insolvent or is declared bankrupt.

#### 15. Liquidated Damages

In case ABB has agreed in writing upon a guaranteed delivery date (hereinafter the "Guaranteed Delivery Date") and if the actual delivery date is delayed more than 60 (sixty) calendar days beyond the Guaranteed Delivery Date due to causes directly and solely attributable to ABB, ABB shall pay Purchaser as liquidated damages and not as a penalty, a sum equal to 0.5 % (0.5 percent) of that portion of the Contract Price attributable to the delayed Product and/or Service for each subsequent full week of delay, up to an aggregate maximum of 5 % (five percent) of the Contract Price for all delayed Products and/or Services. The liquidated damages shall be ABB's sole and exclusive liability for delay.

#### 16. Compliance

- 16.1. Purchaser hereby warrants that it will not, directly or indirectly, and it 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 ABB or any other party in a manner contrary to applicable laws (including but not limited to the U.S. Foreign Corrupt Practices Act 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.
- 16.2. Nothing in the Contract shall render ABB liable to reimburse Purchaser for any such consideration given or promised.
- 16.3. Purchaser's violation of any of the obligations contained in Clause 16.1 above may be considered by ABB to be a material

breach of the Contract and shall entitle ABB to terminate the Contract with immediate effect and without prejudice to any further right or remedies on the part of ABB under the Contract or applicable law. Purchaser shall indemnify ABB for all liabilities, damages, costs or expenses incurred as a result of any such violation of the above mentioned obligations and termination of the Contract.

- 16.4. Purchaser herewith acknowledges and confirms that it has received a copy of ABB's Code of Conduct or is aware how to access the Code of Conduct online. Purchaser agrees to perform its contractual obligations under the Contract with substantially similar standards of ethical behavior.
- 16.5. ABB has established the following reporting channels where Purchaser and its employees may report suspected violations of applicable laws, policies or standards of conduct:  
Web portal: [www.abb.com/ethics](http://www.abb.com/ethics)  
Telephone: number specified on the above Web portal  
Mail: address specified on the above Web portal

## 17. Miscellaneous

- 17.1. Any notice with respect to the Contract shall be made in writing in English and shall be deemed to have been duly given if sent by courier, facsimile or registered letter to the party's address and facsimile number provided in the Contract (or such other address/number as may be notified from time to time). Any notice shall conclusively be deemed to have been received on (i) the next working day in the place to which it is sent, if sent by facsimile, subject to confirmation of uninterrupted transmission by a transmission report, (ii) on the second next working day in the place to which it is sent, if sent by courier, or (iii) on the seventh calendar day from the day of posting (or if such day is not a working day in the place to which it is sent, the following working day), if sent by registered letter.
- 17.2. The Contract constitutes the entire agreement and understanding between the parties with respect to the subject matter of the Contract and supersedes all prior agreements and understandings (both written and oral) between the parties relating thereto.
- 17.3. No provisions of the Contract may in any respect be waived or amended, unless such waiver or amendment is made in writing and signed by duly authorized representatives of both parties.
- 17.4. ABB may assign or novate its rights and obligations under the Contract, in part or in whole, to any of its Affiliates without Purchaser's consent and may subcontract portions of the work, so long as ABB remains responsible for it. Purchaser agrees to execute any documents that may be necessary to effect ABB's assignment or novation. The delegation or assignment by Purchaser of any or all of its duties or rights under the Contract without ABB's prior written consent shall be void.
- 17.5. Purchaser shall notify ABB immediately upon any change in the ownership of more than 50 % (fifty percent) of Purchaser's voting rights or in Purchaser's controlling interest. If Purchaser fails to do so or ABB objects to the change, ABB may (i) terminate the Contract; (ii) require Purchaser to provide adequate assurance of performance (including but not limited to payment); or (iii) put in place special controls regarding ABB's Confidential Information.
- 17.6. In case any one or more of the provisions contained in the Contract should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the Contract shall be given effect as if the invalid, illegal or unenforceable provision had been deleted and replaced by a provision with a similar economic effect to that of the deleted provision if this can be achieved by another provision.

- 17.7. All policies with respect to any insurance maintained by Purchaser relating in any way to the Contract shall waive any right of subrogation of the insurers against ABB.
- 17.8. All laws and regulations referenced in the Contract shall be those in effect as of the effective date of the Contract. In the event of any subsequent revisions or changes thereto ("Change of Law"), ABB assumes no responsibility for compliance therewith. If a Change of Law has an effect on ABB's obligations under the Contract, Purchaser shall compensate ABB for all costs and expenses arising out of such Change of Law and the delivery date shall be extended for a period equal to the time lost by reason of the Change of Law.
- 17.9. In the event of any illness or accident affecting any of ABB's personnel in connection with the performance under the Contract necessitating medical attention or hospital treatment, Purchaser shall ensure that the best and appropriate medical facilities and medications are made available to ABB's personnel. If it is necessary to repatriate an ill, injured or deceased member of ABB's personnel, Purchaser shall assist ABB in arranging for such repatriation in the safest and most expedient manner. All costs incurred under this Clause 17.9 shall be borne by Purchaser.
- 17.10. The following Clauses shall survive termination or cancellation of the Contract: 7, 8, 9, 10, 18.

## 18. Disputes and Applicable Law

- 18.1. The Contract shall be governed by the substantive laws South Africa.
- 18.2. All disputes arising in connection with the present Contract, including its conclusion, which cannot be settled amicably between the parties, shall be finally settled by arbitration in accordance with the laws of the Republic of South Africa under the rules and auspices of the Arbitration Foundation of Southern Africa. Such arbitration shall be held in the English language and in the city of Johannesburg, South Africa. The arbitrator shall be as agreed to between the parties or failing such agreement, the Registrar of the Arbitration Foundation shall appoint an arbitrator to adjudicate on the matter. The decision of the arbitrator shall be final and binding and there shall be no right of appeal. Either party may approach a court of competent local jurisdiction for interim or urgent relief.