ABM GENERAL TERMS AND CONDITIONS

SALE OF PRODUCTS

(2011 - VER. 1)

1. Definitions

1.1. ABB: means the legal entity of the ABB Group providing Products 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 of 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, 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 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 wilful disregard of any consequence of such act or omission and which causes grave and harmful consequences to persons 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 under the Contract.

2. General

2.1. These GTC apply to any offer, sale or supply of Products 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 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.

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

5.1. Delivery of the Products shall be FCA works pursuant to INCOTERMS 2010.

5.2. Delivery of the Products in instalments, 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 on 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 Taxe, shall be payable by Purchaser upon submission of ABB’s invoices; and (iii) when
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, 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 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 OTC 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 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 obligation 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 of 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 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 in the form of a draft change order. Such 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 unless 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, destruction, 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), terrorist 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.
11. Confidentiality

11.1. In connection with the Contract, ABB and Purchaser (as to information disclosed by ABB) and Purchaser (as to information disclosed by ABB) and ABB shall agree that, if any Confidential Information is disclosed or disseminated, the Recipient (i) shall maintain the Confidential Information in confidence; (ii) shall not use the Confidential Information for any purpose other than those related to the Contract, and (iii) shall not disclose the Confidential Information to any third party. The obligations of the Recipient under this Section shall be binding on any person to whom the Confidential Information is disclosed by the Recipient.

12. Termination and Suspension

12.1. If, in the opinion of the party giving notice, any party fails to perform, or is unable to perform, any of its obligations under this Contract, such party may give notice to the other party, specifying the nature of the failure and a reasonable period to cure such failure. If the failure is not cured within such period, the aggrieved party may terminate the Contract by giving written notice to the other party.

12.2. If any representation or warranty made by Purchaser shall prove to be incorrect or fraudulent, or if the performance of the Contract shall become impossible due to any cause for which ABB is not responsible, ABB may terminate the Contract by giving written notice to Purchaser.

12.3. If the acts or omissions of Purchaser or ABB (as applicable) cause the Contract to be terminated under any of the foregoing provisions of this Section, the other party shall be entitled to receive the balance of the Contract Price due to it, less any costs, expenses, and damages caused by the termination.

12.4. If all proceedings for terminating the Contract have been completed, and if the balance of the Contract Price due to the other party has been paid, the Contract shall terminate.

13. Liquidated Damages

13.1. If any party fails to perform any of its obligations under this Contract, the party in default shall be liable to the other party for liquidated damages in an amount equal to [insert amount].

13.2. The liquidated damages shall be paid by the defaulting party to the aggrieved party upon written notice of the default.

13.3. If the liquidated damages are not paid within [insert time period], the aggrieved party may terminate the Contract by giving written notice to the defaulting party.


14.1. This Agreement is subject to the laws of [insert applicable jurisdiction].

14.2. This Agreement may be amended or modified only by a written instrument signed by both parties.

14.3. This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, understandings, and agreements.

14.4. Any notice required under this Agreement shall be in writing and shall be deemed given when received by the party to which it is addressed.

14.5. This Agreement shall be binding on the successors and assigns of the parties.

14.6. This Agreement shall not be enforceable by any third party.
attributable to the delayed Product for each subsequent full week of delay, up to an aggregate maximum of 5% (five percent) of the Contract Price for all delayed Products. 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 forthwith 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
- 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 uninterupted 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 (a) terminate the Contract, (b) require Purchaser to provide adequate assurance of performance (including but not limited to payment), or (c) 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. 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 of 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.