



ABB4ABB

GENERAL TERMS AND CONDITIONS FOR ABB INTERNAL PURCHASES OF GOODS AND/OR SERVICES (2018-1)

The following terms and conditions (the **ABB GTC**) apply supplementary to Contracts for the purchase of Goods and/or Services by an ABB Group Company (**Customer**) from another ABB Group Company (**Supplier**), each of them referred to as a Party. For the purposes of these ABB GTC, an **ABB Group Company** is an entity which directly or indirectly is owned or controlled by ABB Ltd, Zurich, Switzerland.

1 DEFINITIONS

Contract: a written agreement and/or the order for the purchase of Goods and/or Services by Customer from Supplier, including all documents forming part thereof, such as specifications.

Delivery: delivery of Goods and/or performance of Services by Supplier in accordance with Clause 5.1.

Embedded Software: software which is necessary for (i) operation of and embedded in Goods and/or (ii) performance of Services.

Goods: the physical goods to be delivered by Supplier in accordance with the Contract, but excluding Embedded Software.

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.

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

Services: the services to be performed by Supplier, including related deliverables to be provided as applicable, in accordance with the Contract, but excluding Embedded Software.

2 RESPONSIBILITIES

2.1 Supplier shall deliver the Goods and/or perform the Services in accordance with the Contract.

2.2 Supplier shall accept the Contract and acknowledge order at the latest within seven (7) calendar days.

2.3 When Customer identifies quality related issues on the part of Supplier, Customer will notify Supplier thereof. Notwithstanding other remedies available to Customer under the Contract, Customer may instruct Supplier to undertake at Supplier's risk and expense an analysis into the root cause(s) of the quality related issues; such analysis being undertaken and reported to Customer within ten (10) calendar days of the notification of the quality related issue(s).

2.4 Both Parties shall fulfill their respective obligations under the Contract in compliance with applicable laws as well as external and internal regulations, all of which will prevail in case of any discrepancy with the Contract.

2.5 Both Parties shall comply with all applicable trade, customs, and sanctions laws, regulations, instructions, and policies, including, but not limited to, satisfying export/import clearance requirements, securing proofs of origin, export/import licenses or exemptions therefrom (consistent with applicable legal requirements), and making all required disclosures to or filings with governmental bodies, including with respect to the release or transfer of technology or software source code to non-U.S. nationals in the U.S. (that is, "deemed exports"). Outside the U.S., the Parties shall also comply with all export control or sanctions requirements relating to the re-export, release, or transfer of products, technology, and software having controlled U.S. content or derived from U.S. origin software or technology.

2.6 Customer is responsible for installation, commissioning and start-up of the Goods.

Supplier shall without additional charge and not later than at the date of Delivery provide written technical documentation as necessary to enable Customer to install, commission, operate and maintain the Goods. Supplier shall provide Services to support such installation and commissioning at hourly rates as agreed in the Contract.

2.7 Where installation, commissioning or other activities at the site of Customer's client or the end-customer are required, Customer is responsible at its own cost for the measures necessary for such activities at site, including ancillary services, utilities, work permits etc.

3 VARIATIONS; SUSPENSION

3.1 Within the general scope of the Goods and/or Services purchased, Customer may place variation orders for such Goods and/or Services, which may include an increase or decrease in the quantity, quality, or character of the Goods and/or Services or parts thereof as well as changes to the schedule. Upon receipt of a variation order, Supplier shall at the latest within seven (7) calendar days submit to Customer an estimate describing the variation work and expected impacts on price and schedule. Customer shall accept or reject such estimate in writing; if accepted by Customer, the Contract is deemed amended accordingly.

3.2 If Supplier believes a variation is required, Supplier shall at the latest within seven (7) calendar days after the occurrence giving reason to such request submit to Customer an estimate describing the variation work and expected impacts on price and schedule. Customer shall accept or reject such estimate in writing; if accepted by Customer, the Contract is deemed amended accordingly.

3.3 Customer may at any time suspend the Contract in whole or in part by written notice to Supplier. Upon receipt of such notice, Supplier shall immediately suspend performance of the Contract and notify Customer of any relevant impacts the suspension may have. Customer shall pay Supplier for Goods delivered and Services performed until suspension and for any documented direct costs reasonably incurred by Supplier as a consequence of the suspension. The schedule of the Contract will be extended accordingly. If the suspension exceeds one hundred and twenty (120) calendar days, Supplier is entitled to terminate the Contract by notice in writing to Customer.

4 INVOICING, TAXES, PAYMENT

4.1 Supplier shall invoice and Customer shall pay for the Goods delivered and/or Services performed in accordance with applicable ABB regulations, including but not limited to GI/GT-01.09 Group Internal Payment Conditions.

4.2 Prices for Goods and/or Services offered by Supplier do not include any value added or sales tax, such as VAT, GST or similar taxes.

5 DELIVERY; ACCEPTANCE

5.1 Supplier shall deliver the Goods as specified in Contract in accordance with GI/SCM-01.05 Group Internal Incoterms. Partial shipments are only permitted if expressly agreed. Supplier shall perform the Services at the place specified in the Contract or, in the absence of such specification, at the place of business of Customer's client.

5.2 Upon Delivery of Goods, Supplier (or its appointed carrier) shall provide Customer a delivery note and any required export and import documentation. If partial shipments have been agreed, such note shall include the outstanding balance.

5.3 Ownership to the Goods will pass to Customer at Delivery.

5.4 Supplier shall deliver the Goods and perform the Services during Customer's business hours, unless requested otherwise by Customer.

5.5 Customer is not deemed to have accepted any Goods and/or Services until it has had reasonable time to inspect or test them following Delivery, as applicable. Customer's obligation to inspect Goods and/or Services is limited to quantity and type of the Goods and/or Services, and obvious defects or damages resulting from transport.

5.6 If Customer is unable to inspect Goods and/or Services within reasonable time following Delivery, it shall notify Supplier in writing without undue delay, specifying the reason and the anticipated time of inspection. Supplier will be entitled to claim documented direct costs reasonably incurred by Supplier as a consequence of such delayed inspection.

6 DELAY

If Delivery does not meet the agreed Delivery date for reasons attributable to Supplier, Supplier shall reimburse Customer for cost, losses and expenses incurred by Customer as a consequence thereof, including liquidated damages paid by Customer to its client.

7 DEFECTS LIABILITY

7.1 Supplier warrants that the Goods and/or Services comply with the Contract.

7.2 Supplier warrants that the Goods are new and unused at Delivery and remain free from defects during the warranty period.

7.3 Unless otherwise agreed by the Parties, the warranty period for Goods and Services commences upon Delivery and will expire at the earliest of (i) twenty four (24) months from the date on which the Goods have been taken into use, or (ii) thirty six (36) months from the agreed Delivery date, or (iii) twenty four (24) months from completion of the Services.

7.4 In the event Supplier acts as subcontractor to Customer in relation to a main contract between Customer and its client, the warranty terms of such main contract between the client and Customer apply mutatis mutandis between Customer and Supplier instead of Clause 7.3, unless otherwise agreed in the Contract.

7.5 In case of breach of any of the above warranties, Customer shall give notice of such breach in writing to Supplier without undue delay and provide Supplier an opportunity to remedy the breach at its own risk and cost within reasonable time.

8 INTELLECTUAL PROPERTY; LICENSE

8.1 Ownership in Intellectual Property Rights in Goods, Embedded Software and/or Services is not affected by the Contract and remains with Supplier or the respective third party owner, as applicable.

8.2 Supplier grants, or – as applicable – shall procure that the third party owner grants, Customer a non-exclusive, fully paid-up license to use the Goods, Embedded Software, if any, and/or Services for the purpose of the Contract.

8.3 If a claim is made against Customer that the Goods, Services and/or Embedded Software infringe third party Intellectual Property Rights, Supplier shall at its cost, but at Customer's discretion (i) procure for Customer the right to continue using the Goods, Services and/or Embedded Software, (ii) modify the Goods, Services and/or Embedded Software so they cease to be infringing; or (iii) replace the Goods, and/or Services by non-infringing equivalents. In case of Embedded Software owned by a third party other than Supplier or another ABB Group Company, such Embedded Software is provided as is, and the above mentioned remedies do not apply.

9 CONFIDENTIALITY / DATA PROTECTION

9.1 All information exchanged between the Parties is confidential and must not be disclosed to a third party without the other Party's written permission, unless such information (i) is already known to the receiving Party at the time the information was obtained, (ii) is or becomes part of the public domain other than through a fault of the receiving Party, (iii) is rightfully obtained by the receiving Party from a third party without an obligation of confidentiality, (iv) is independently developed by the receiving Party.

9.2 Customer may, however, use or disclose confidential information to its client and/or an end customer to the extent necessary for the

use of the Goods and/or the Services. In such event, Customer shall ensure that such third parties will be bound to substantially similar confidentiality undertakings as defined in this Clause. Each of the Parties may also disclose confidential information to governmental authorities if required by applicable law.

9.3 Data protection

9.3.1 If Customer discloses Personal Data to Supplier, Supplier shall comply with all applicable data protection laws and regulations.

9.3.2 Supplier 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.

9.3.3 Supplier agrees that it will not withhold or delay its consent to any changes to this Clause 9.3. which in Customer's reasonable opinion are required to be made in order to comply with applicable data protection laws and regulations and/or with guidelines and order from any competent supervisory authority, and their application to the Services from time to time, and agrees to implement any such changes at no additional cost to Customer.

9.3.4 Supplier 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 Customer. If and to the extent such additional data processing or data protection agreements are not initially concluded as part of the Contract, the Supplier shall, ensure that its relevant subcontractors shall, upon Customer's request promptly enter into any such agreement with Customer and as required by mandatory law or a competent data protection or other competent authority.

10 LIABILITY, INDEMNITY

10.1 Supplier is responsible for and shall indemnify, defend and hold harmless Customer from and against all claims, losses, damages, costs (including legal costs), expenses and liabilities (collectively **Claims**) in respect of: (a) loss of or damage to physical property of Supplier whether owned, hired, leased or otherwise provided by Supplier arising from, relating to or in connection with the performance of the Contract and (b) physical injury or death of Supplier's personnel, including the personnel of its subcontractors, except for Claims caused by Customer's negligence.

10.2 Customer is responsible for and shall indemnify, defend and hold harmless Supplier from and against all Claims in respect of: (a) loss of or damage to physical property of Customer whether owned, hired, leased or otherwise provided by Customer arising from, relating to or in connection with the performance of the Contract and (b) physical injury or death of Customer's personnel, including the personnel of its subcontractors, except for Claims caused by Supplier's negligence.

10.3 A Party shall promptly notify the other Party if there is a claim that the other Party is obliged to indemnify under this Clause 10. The Parties shall give each other information and other assistance

needed for handling the claim. Neither Party must accept any claim or make any statements regarding such claim without written consent of the other Party.

10.4 The total aggregate liability of a Party arising out of or in connection with the Contract is limited to 100 % of the Contract price.

10.5 Neither Party is liable to the other Party for any loss of production, loss of use, loss of data, downtime and loss of profit or other economic or financial loss, or for indirect or consequential loss, whether arising in contract, tort (including negligence whether active or passive), warranty, strict liability or otherwise.

10.6 Notwithstanding the foregoing, no limitation or exclusion of liability will apply for claims arising from willful misconduct, gross negligence, death or personal injury, infringements of third party Intellectual Property Rights, liquidated damages paid by Customer to its client or any other liability that cannot be avoided based on mandatory laws.

11 TERMINATION

11.1 In case of a material breach of one Party's obligations, which is not remedied within seven (7) calendar days after having been notified by the other Party in writing, the non-breaching Party may terminate the Contract with immediate effect.

11.2 In the event Supplier acts as subcontractor to Customer in relation to a main contract between Customer and its client and such main contract is terminated for any reason, (a) Customer may terminate the Contract in whole or in part by giving Supplier thirty (30) calendar days written notice and (b) to the extent Customer has received payment under the main contract, Customer shall pay to Supplier the value of the Goods already delivered and/or Services already performed and documented direct costs reasonably incurred by Supplier for the Goods not yet delivered and/or Services not yet performed, however in no event more than the agreed Contract price.

12 FORCE MAJEURE

12.1 Neither Party will be liable for any delay or failure to perform its obligations under the Contract if the delay or failure results from an event of Force Majeure. **Force Majeure** means an event that was not foreseeable by the affected Party at the time of execution of the Contract, and is outside the reasonable control of the affected Party. The affected Party shall provide written notice to the other Party within five (5) calendar days from occurrence of the Force Majeure event.

12.2 If a Force Majeure event exceeds one-hundred and twenty (120) calendar days, either Party may terminate the Contract forthwith by written notice without liability. Each Party shall use reasonable efforts to minimize the effects of the Force Majeure event.

13 ASSIGNMENT AND SUBCONTRACTING

Both Parties may assign, transfer or subcontract their rights and obligations under the Contract to another ABB Group Company. In

case of subcontracting, they however remain responsible for the subcontractor's acts or omissions.

14 APPLICABLE LAW; DISPUTE RESOLUTION

14.1 The Contract is governed by the substantive laws of Switzerland, under exclusion of its conflict of laws principles and the United Nations Convention on Contracts for the International Sale of Goods.

14.2 Any dispute arising in connection with the Contract shall be settled by the ABB Arbitration Panel as defined in GI/GT-01.09 Group Internal Payment Conditions.

15 ENTIRE AGREEMENT; AMENDMENTS

The Contract constitutes the entire agreement between the Parties and replaces any prior agreement between them with regard to its subject. Amendments to the Contract are only valid if agreed in writing.