

# ABB GENERAL TERMS AND CONDITIONS

## FOR PURCHASE OF SERVICES

### ABB GTC/SERVICES (2014-1 SPAIN)

**DATE:** April 1<sup>st</sup>, 2014

**FOR:** ABB Affiliates' purchases of services, excluding services related to R&D work, product development, software, information systems, and networks, transportation and logistics, erection and installation of machinery and equipment, provision of temporary work(ers), and legal support.

#### 1. DEFINITIONS AND INTERPRETATION

1.1 In this document

**“ABB GTC/Services”:** means the present ABB General Terms and Conditions for Purchase of Services (2014-1 Spain);

**“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 a Party, by virtue of a controlling interest of 50 % or more of the voting rights or the capital;

**“Applicable Terms and Conditions”:** means the terms and conditions applicable to the respective Contractual Relationship established by the Order – comprising the terms and conditions of the ABB GTC/Services and other terms and conditions contained in the Order and/or any contractual document (written frame or direct agreement) regarding the purchase of the Services;

**“Contractual Relationship” or “Contract”:** means the contractual relationship established by (i) Customer's Order for purchase of Services referencing this ABB GTC/Services which is accepted by Supplier (either expressly by written statement, or impliedly by fulfilling the Order, in whole or in part), or (ii) a written agreement concluded between the Parties for purchase of Services referencing this ABB GTC/Services, in any case including the related contractual documents;

**“Customer”:** means the purchasing ABB entity ordering Services from Supplier;

**“Delivery”:** means completion of Services, including provision of Work Products, if any, by Supplier in accordance with INCOTERMS 2010 DAP unless otherwise specified by the Parties in the Applicable Terms and Conditions;

**“Intellectual Property (Rights)”:** means all proprietary rights in results created intellectually (by thought) and protected by law, including but not limited to patents, patent applications and related divisionals and continuations, utility models, industrial designs, trade names, trademarks, copyrights (regarding software source codes, documentation, data, reports, tapes and other copyrightable material) and respective applications, renewals, extensions, restorations, or proprietary rights in results created intellectually (by thought) which are protected by confidentiality, including but not limited to know-how and trade secrets;

**“IPR Indemnification”:** means reimbursement of Customer by Supplier for costs, claims, demands, liabilities, expenses, damages or losses (including without limitation to any direct, indirect, or consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) arising out of Supplier's third party Intellectual Property Right infringements;

**“Order”:** means Customer's purchase order (PO) issued to Supplier requesting performance of the Services as specified in the Order form and in the Order related documents, such as specifications, drawings and annexes expressly referred to in or attached by Customer to such Order; an Order has to be placed (i) as an electronic Order in case Customer and Supplier have expressly agreed to communicate that way, or (ii) as a written Order; in both cases the applicable ABB Standard Order Forms (as published from time to time on [www.abb.com](http://www.abb.com) – Supplying to ABB – Doing Business with ABB or otherwise made available by

Customer to Supplier) must be used by Customer and Supplier. Any of Supplier's input to Customer's electronic Order system and any other documentation and information uploaded by Supplier to Customer's electronic systems must be provided by Supplier in the English language or as otherwise required by applicable law;

**“Party”:** means either Customer or Supplier;

**“Services”:** means the services to be provided, including the Work Products to be delivered by Supplier according to the Applicable Terms and Conditions;

**“Supplier”:** means the party providing the Services to Customer on the basis of the Applicable Terms and Conditions;

**“Variation Order”:** means a change to the Order such as to alter, to amend, to omit, to add to, or otherwise to change the Order or any parts thereof;

**“VAT”:** means value added tax or any sales tax to be paid by a purchaser to a seller or service provider as part of or in addition to the sales price;

**“Work Product”:** means all materials, documents, software or other items which are the result of the Services provided by Supplier under the respective Order in any form or media, including without limitation to data, diagrams, reports, specifications (including drafts).

1.2 Unless otherwise specified in the present ABB GTC/Services:

1.2.1 References to clauses are to clauses of the ABB GTC/Services;

1.2.2 Headings to clauses are for convenience only and do not affect the interpretation of the ABB GTC/Services;

1.2.3 The use of the singular includes the plural and vice versa;

1.2.4 The use of any gender includes all genders.

#### 2. APPLICATION

2.1 The ABB GTC/Services (latest version made available by Customer to Supplier) shall apply if (i) Supplier accepts Customer's Order for purchase of Services, or if (ii) the Parties conclude an agreement for purchase of Services, provided that the agreement or the Order for purchase of Services expressly refers to and incorporates the ABB GTC/Services as Applicable Terms and Conditions.

2.2 Each Order requires acceptance by Supplier either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part. Customer's Order form may specify a limited time period for acceptance; lapsing of such period without Supplier's acceptance of the Order shall give Customer the right to cancel the Order. Variation Orders requested by Supplier shall only become effective after express written confirmation by Customer.

2.3 The ABB GTC/Services are the only terms and conditions upon which Customer is prepared to deal with Supplier for the provision of Services, and it shall govern the Contractual Relationship between Customer and Supplier to the exclusion of all other terms or conditions, except if and to the extent otherwise expressly agreed in writing between Customer and Supplier.

2.4 No terms or conditions endorsed upon, delivered with or contained in Supplier's quotations, acknowledgements or acceptances of Orders, specifications or similar documents will form part of the Contractual

Relationship, and Supplier waives any right which it otherwise might have to rely on such other terms or conditions.

2.5 References in the ABB GTC/Services to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

### 3. SUPPLIER'S RESPONSIBILITIES

3.1 Supplier shall provide the Services and deliver the Work Products:

3.1.1 in accordance with the applicable laws and regulations;

3.1.2 in accordance with the quality standards stated under Clause 9.1 and specified in the Order and in the other documents being part of the Contractual Relationship;

3.1.3 free from defects and from any rights of third parties;

3.1.4 on the due date specified in the Order;

3.1.5 in the quantity specified in the Order;

3.1.6 with all skill and care and in accordance with industry best practice.

3.2 Supplier shall not substitute or modify any of the agreed materials used for the provision of the Services or make any changes to the agreed ingredients, the design or other agreed criteria of the Work Products without Customer's prior written approval.

3.3 Supplier shall take care that Work Products are contained or packaged in the manner usual for such Work Products or, where there is no such manner, in a manner adequate to preserve and protect the Work Products until Delivery completion.

3.4 Supplier shall submit invoices in an auditable form, complying with Supplier's and Customer's applicable local mandatory law, generally accepted accounting principles and the specific Customer requirements, containing the following minimum information: Supplier name, address and reference person including contact details (telephone, e-mail etc.); invoice date; invoice number; Order number (same as stated in the Order); Supplier number (same as stated in the Order); address of Customer; quantity; specification of Services supplied; price (total amount invoiced); expenses approved by Customer, but not included in the price (to be specified by amount and category); currency; tax or VAT (amount has to be specified); tax or VAT number; payment terms.

3.5 Invoices shall be issued to Customer as stated in the Order and/or the Applicable Terms and Conditions, and shall be sent to the invoice address specified in the Order.

3.6 Expenses not agreed in writing by Customer will not be reimbursed.

3.7 Customer may issue Variation Orders to Supplier to alter, amend, omit, add to, or otherwise change ordered Services or parts thereof, and Supplier shall carry out such Variation Orders. Agreed unit prices stated in the Order and/or otherwise agreed between Customer and Supplier shall apply.

3.8 Supplier shall in no event suspend the performance of any Services or the Delivery of Work Products to Customer. In the event of Force Majeure, Clause 16 shall apply.

### 4. CUSTOMER'S RESPONSIBILITIES

4.1 In consideration of the Services provided by Supplier in accordance with the Applicable Terms and Conditions, Customer shall pay to Supplier the fees or purchase price stated in the Order in accordance with the payment terms specified therein, provided the invoice fulfils the requirements of Clauses 3.4 and 3.5. In the event that the payment terms are determined by mandatory applicable law, such terms shall prevail.

4.2 Customer reserves the right to set off any amount and to withhold payment for Services not provided in accordance with the Applicable Terms and Conditions.

### 5. DELIVERY

5.1 The Services shall be provided at the agreed place specified in the Order, or, if no such place has been specified, at Customer's address specified in the Order.

5.2 The Work Products shall be delivered in accordance with INCOTERMS 2010 DAP, to the agreed place specified in the Order, or, if no such place has been specified, to Customer's place of business.

5.3 Supplier shall ensure that each Delivery of a Work Product is accompanied by a delivery note, which shall contain the following minimum information (unless required otherwise by Customer): the Order number, date of Order, number of packages and contents, where applicable the customs tariff number of the country of consignment, and, in the case of partial delivery, the outstanding balance remaining to be delivered. For controlled goods, the national export control number must be indicated and, and if the goods are subject to U.S. export regulations, the U.S. Export Control Classification Number (ECCN) must be specified in the delivery note. Proofs of preferential origin as well as conformity declarations and marks of the country of consignment or destination are to be submitted without being requested; certificates of origin upon request.

5.4 Work Products shall be delivered during Customer's business operation hours unless otherwise requested by Customer.

5.5 Upon Delivery of the Work Products, Supplier (or its appointed carrier) shall provide Customer with such export documents as are applicable or necessary together with a delivery note.

5.6 Ownership (title) regarding Work Products shall pass to Customer at Delivery, except if otherwise agreed in writing. For assigning of Intellectual Property in the Work Products arising from the Services Clause 11.1 shall apply.

5.7 Supplier shall invoice Customer upon Delivery in accordance with Clause 3.4 and 3.5, but such invoicing shall be conducted separately from dispatch of the Work Products to Customer.

### 6. ACCEPTANCE

6.1 Customer shall not be deemed to have accepted any Services until it has had a reasonable time to inspect them following completion or, in the case of a defective performance, until a reasonable time after such defective performance has become apparent. Such reasonable time period shall be determined by the specifics of the Services, the defective performance and the circumstances of the provision of the Services.

6.2 If any Services provided or Work Products delivered to Customer do not comply with Clause 3 (Supplier's Responsibilities), or are otherwise not in conformity with the Order, then, without limiting any other right or remedy that Customer may have under Clause 10 (Remedies), Customer may reject the Services and/or the Work Products, and may request replacement of the Services and/or the Work Products, or recover all payments made to Supplier by Customer.

6.3 Upon Supplier's request Customer shall send written acceptance statement to Supplier.

### 7. DELAY

If the Delivery of the Services or the Work Products does not comply with the agreed delivery date(s), then, without prejudice to any other rights which it may have under the Contractual Relationship or at law, Customer reserves the right to:

7.1 terminate the Contractual Relationship or the respective Order in whole or in part;

7.2 refuse any subsequent Delivery of Services or Work Products which Supplier attempts to make;

7.3 recover from Supplier any expenditure reasonably incurred by Customer in obtaining the Services or the Work Products in substitution from another supplier;

7.4 claim damages for any additional costs, loss or expenses incurred by Customer which are reasonably attributable to Supplier's failure to provide the Services or to deliver the Work Products on the agreed dates; and

7.5 claim compensation for liquidated damages in addition to the rights provided under Clauses 7.1 to 7.4 if such compensation right is expressly stated in the respective Order.

## 8. INSPECTION

8.1 Supplier shall allow Customer and/or its authorised representatives to inspect the Services and to test the Work Products, or parts of them at any time prior to the completion of the Services and/or the Work Products.

8.2 Notwithstanding any inspection or test sampling however conducted, Supplier shall remain fully responsible for the Services' compliance with the Order. This applies whether or not Customer has exercised its right of inspection and/or testing and shall not limit Supplier's obligations under the Order. For the avoidance of doubt, inspection of Services or testing of Work Products by Customer and/or its authorised representatives shall in no event exempt Supplier from or limit Supplier's warranties or liability in any way.

## 9. WARRANTY

9.1 Supplier warrants that the Services (including Work Products):

9.1.1 comply with all agreed specifications, including all specified material, workmanship and the like, documentation and quality requirements, or in absence thereof are performed in accordance with generally accepted practices, procedures and standards of the respective industry and are fit for the purposes for which Services of the same description type would ordinarily be used, and that the results of the Services maintain the functionality and performance as expected by Customer according to Supplier's information, documentation and statements;

9.1.2 are appropriate and fit for any particular purpose expressly or impliedly made known to Supplier in the Order;

9.1.3 are new and unused (in case of Work Products) at the date of Delivery;

9.1.4 are free from defects and rights of third parties;

9.1.5 possess the qualities which Supplier has held out to Customer as a sample, model or otherwise;

9.1.6 comply with Clause 12 (Compliance with Relevant Law).

9.2 The warranty period shall be twenty four (24) months from acceptance of the Services or the Work Products, if no other time period is stated in the Order or otherwise expressly agreed in writing by the Parties.

9.3 In case of non-compliance with the warranty provided under this Clause, Customer shall be entitled to enforce the remedies provided in Clause 10 (Remedies).

## 10. REMEDIES

10.1 In case of breach of warranty under Clause 9 (Warranty) or if Supplier otherwise fails to comply with any of the Applicable Terms and Conditions, Customer shall give notice in writing to Supplier of such breach of warranty and provide Supplier an opportunity to swiftly remedy it. If no Supplier action to remedy such breach has been taken within forty eight (48) hours of receiving such Customer notification, Customer shall be entitled to any one or more of the following remedies at its own discretion and at Supplier's expense:

10.1.1 to give Supplier another opportunity to carry out any additional work necessary to ensure that the Applicable Terms and Conditions are fulfilled;

10.1.2 to carry out (or to instruct a third party to carry out) any additional work necessary to make the Services comply with the Applicable Terms and Conditions;

10.1.3 to obtain immediate replacement of the defective Services by Services conforming with the Applicable Terms and Conditions without defects;

10.1.4 to refuse to accept any further Services, but without relieving Supplier from its liability for the defective Services;

10.1.5 to claim such damages as may have been sustained by Customer as a result of Supplier's breaches of the Applicable Terms and Conditions, statutory duty or any applicable law;

10.1.6 to claim liquidated damages expressly provided in the Order;

10.1.7 to terminate the Contractual Relationship or the respective Order in accordance with Clause 15.2.

10.2 In the event that Clauses 10.1.1, 10.1.2 or 10.1.3 apply, the entire warranty period of Clause 9.2 shall be restarted.

10.3 The rights and remedies available to Customer and contained in the Applicable Terms and Conditions (including, but not limited to the ABB GTC/Services) are cumulative and are not exclusive of any rights or remedies available at law or in equity.

## 11. INTELLECTUAL PROPERTY

11.1 Supplier assigns herewith to Customer full ownership rights in and to any Intellectual Property in the Work Products arising from the Services for the full duration of such rights, wherever in the world enforceable. Supplier further agrees to execute, upon Customer's request and at its cost, all further documents and assignments and do all such further things as may be necessary to perfect Customer's ownership title to the Intellectual Property or to register Customer as owner of the Intellectual Property with any registry, including but not limited to governmental registration authorities or private registration organisations.

11.2 The Intellectual Property Rights in any Work Products created by or licensed to Supplier prior to the respective Order or outside of such Order, and any subsequent modifications to the same ("Pre-Existing Works") will remain vested in Supplier or the respective third party owner. To the extent that Pre-Existing Works are embedded in any Work Products delivered by Supplier, Customer and its Affiliates shall have a worldwide, irrevocable, perpetual, transferrable, non-exclusive, royalty-free licence with rights to sublicense to use the Pre-Existing Works as part of such Work Products, including the right to further improve, develop, market, distribute, sub-license, exploit or otherwise use the Work Products containing such Pre-Existing Works. Supplier shall not be prevented or restricted by this ABB GTC/Services from using its own know-how or its Pre-Existing Works in the course of providing the Services.

11.3 In the event that the Services provided and/or Work Products delivered by Supplier infringe any third party Intellectual Property Rights, Supplier shall, notwithstanding anything provided to the contrary or otherwise contained in the Applicable Terms and Conditions (including, but not limited to the ABB GTC/Services), provide IPR Indemnification to Customer. The IPR Indemnification applies whether or not Supplier may have been negligent or at fault and does not limit any further compensation rights of Customer. Supplier's obligation to indemnify Customer as provided under this Clause shall not apply if and to the extent the liability or damage was caused by Customer's own pre-existing Intellectual Property Rights contributed to, or implemented into the Work Products and/or the Services provided by Supplier.

11.4 If any infringement claim is made against Customer, Customer may without prejudice to its rights under Clause 11.3 also request at its discretion and at Supplier's cost that Supplier (i) procures for Customer the right to continue using the Work Products and/or the Services; (ii) modifies the Work Products and/or the provision of the Services so that they cease to be infringing; or (iii) replaces the Work Products and/or the Services so that they become non-infringing.

11.5 In the event Supplier cannot fulfil Customer's above request, Customer shall be entitled to terminate the Contractual Relationship or the respective Order, to reclaim all sums which Customer has paid to Supplier thereunder and to claim compensation in accordance with Clause 11.3 and for any other costs, losses or damages incurred whatsoever.

## 12. COMPLIANCE WITH RELEVANT LAW

12.1 The Services covered by the Applicable Terms and Conditions shall be provided by Supplier in compliance with all relevant legislation, regulations, and codes of practice, guidance and other requirements of any relevant government or governmental agency applicable to Supplier. To the extent that such regulations are advisory rather than mandatory, the standard of compliance to be achieved by Supplier shall

be in compliance with the generally accepted best practice of the relevant industry.

12.2 Each Party warrants that it will not, directly or indirectly, and that it has no knowledge that the other Party or any third parties will, directly or indirectly, make any payment, gift or other commitment to its customers, to government officials or to agents, directors and employees of a Party, or any third 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. Nothing in this ABB GTC/Services shall render either Party or any of its Affiliates liable to reimburse the other for any such consideration given or promised.

12.3 Either Party's material violation of any of the obligations contained in this Clause 12 (Compliance with Relevant Law) may be considered by the other Party to be a material breach of the respective Contractual Relationship between the Parties, and shall entitle such Party to terminate the Contractual Relationship with immediate effect and without prejudice to any further right or remedies under such Contractual Relationship or applicable law.

12.4 Notwithstanding anything to the contrary stated in any Applicable Terms and Conditions, Supplier shall, without any limitations, indemnify and hold harmless Customer from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any such violation of the above mentioned obligations, the termination of the respective Contractual Relationship, and any noncompliance with export control regulations, and Supplier shall compensate Customer for all losses and expenses whatsoever resulting therefrom.

12.5 Supplier herewith acknowledges and confirms that it has received a copy of ABB's Code of Conduct and ABB's Supplier Code of Conduct or has been provided information on how to access the ABB Codes of Conduct online ([www.abb.com](http://www.abb.com) – Integrity – Code of Conduct). Supplier agrees to perform its contractual obligations under the Applicable Terms and Conditions and the respective Contractual Relationship with substantially similar standards of ethical behaviour as stated in the above mentioned ABB Codes of Conduct.

12.6 Supplier and its sub-contractors must comply with the ABB Lists of Prohibited and Restricted Substances and with the reporting and other requirements regarding Conflict Minerals and all other employment, safety, health, environmental and quality requirements made available under [www.abb.com](http://www.abb.com) – Supplying to ABB – Doing Business with ABB or otherwise and shall provide Customer with respective documents, certificates and statements if requested. Any statement made by Supplier to Customer (whether directly or indirectly, e. g. where applicable via the ABB Supplier Registration and Pre-Qualification System) with regard to materials used for or in connection with the Services and/or Work Products will be deemed to be a representation under the Contract.

12.7 Supplier represents and warrants that it is knowledgeable with, and is and will remain in full compliance with all applicable export and import laws, regulations, instructions, and policies, including, but not limited to, securing all necessary clearance requirements, export and import licenses 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 goods, hardware, software and technology to non U.S. nationals in the U.S., or outside the U.S., the release or transfer of technology and software having U.S. content or derived from U.S. origin software or technology.

12.8 No goods or services included in the Services and/or Work Products shall originate from any company or country listed in any relevant boycott list issued by the authority in the country where the goods or services shall be used or an authority otherwise having influence over the equipment and material forming part of the Services and/or Work

Products. If any of the Services and/or Work Products is or will be subject to export restrictions, it is Supplier's responsibility to promptly inform Customer in writing of the particulars of such restrictions.

12.9 Supplier shall indemnify and hold Customer harmless for all claims, demands, losses, damages, costs, fines, penalties, attorney's fees and all other expenses arising from export restrictions concealed by Supplier. With respect to export restrictions solely attributable to Customer's use of the Services and/or Work Products, the now said warranty shall only apply to the extent Supplier has knowledge of or reasonably should have been aware of such use.

12.10 Supplier must indicate the customs tariff numbers of the country of consignment for all Services and/or Work Products. For controlled Services and/or Work Products, the national export control numbers must be indicated and, if the Services and/or Work Products are subject to U.S. export regulations, ECCN or ITAR classifications. Proofs of preferential origin as well as conformity declarations and marks of the country of consignment or destination are to be submitted without being requested; certificates of origin upon request.

### 13. CONFIDENTIALITY AND DATA PROTECTION

13.1 Supplier is obliged to observe secrecy regarding any data or information acquired during the fulfilment of the Contract irrespective of whether such data or information relates to Customer, its Affiliates or their respective customers or suppliers ("Customer Data"). This includes in particular, but is not limited to, all technical or commercial know-how, drawings, specifications, inventions, processes or initiatives which are of a confidential nature. To safeguard this,

13.1.1 Supplier shall process or use Customer Data only in accordance with Customer's instructions and with all applicable laws and regulations; for the avoidance of doubt, processing in accordance with the Contract shall be considered to be an instruction from Customer;

13.1.2 Supplier shall not (i) use Customer Data for any other purposes than for providing the Services, or (ii) reproduce Customer Data in whole or in part in any form except as may be required to fulfil its obligations under the Contract; (iii) disclose Customer Data nor grant access to such data to any third party without Customer's prior written consent; no third parties in the meaning of this provision are subcontractors approved by Customer;

13.1.3 Supplier shall take appropriate measures suited to the type of Customer Data to be protected (i) to prevent unauthorised persons from gaining access to data processing systems with which Customer Data are processed or used, (ii) to prevent data processing systems from being used without authorisation, (iii) to ensure that persons entitled to use a data processing system have access only to the data to which they have a right of access, and that Customer Data cannot be read, copied, modified or removed without authorisation in the course of processing or use and after storage, (iv) to ensure that Customer Data cannot be read, copied, modified or removed without authorisation during electronic transmission or transport, and that it is possible to monitor and establish to which bodies the transfer of Customer Data by means of data transmission facilities is envisaged, (v) to ensure that it is possible to monitor and establish whether and by whom Customer Data have been entered into data processing systems, modified or removed, (vi) to ensure that, in the case of commissioned processing of Customer Data, the data are processed strictly in accordance with the instructions of Customer, (vii) to ensure that Customer Data are protected from accidental or unlawful destruction or loss, (viii) to ensure that data collected for different purposes can be processed separately. Supplier shall document the implementation of the technical and organizational measures in detail and shall present this to Customer for review upon request. Where this review raises the need for amendments, these must be applied amicably;

13.1.4 Supplier shall ensure and prove that those members of its staff who may come into contact with Customer Data in the course of fulfilling their tasks are subject to the same obligation to confidentiality

as applicable to Supplier. Supplier shall confirm this in writing upon Customer's request. Customer may verify compliance with the technical and organisational measures undertaken by Supplier any time upon reasonable notice;

13.1.5 The commissioning of subcontractors requires Customer's previous written consent. This applies also in those instances when one subcontractor is replaced by a subsequent one. The contracts awarded by Supplier to its subcontractors are to be formulated in such a manner that they meet the requirements regarding confidentiality and data protection agreed upon in the Contract. Supplier shall provide Customer with information on the essentials of such contracts and on the measures implemented by the subcontractors to fulfil their obligations regarding confidentiality and data protection. If requested by Customer, Supplier shall present its respective contractual documents for the former to examine. Supplier shall ensure that Customer has the same rights to monitor the subcontractors as Customer has to monitor Supplier. Subcommissions in the meaning of this provision do not include ancillary services ordered by Supplier from third parties which are not directly related to Customer, such as telecommunications services, maintenance and user support, cleaning, auditing or the disposal of data media. Even where ancillary services are taken from third parties, Supplier must however ensure confidentiality and undertake monitoring activities.

13.2 The obligation to confidentiality does not apply to such data (i) whose disclosure is required for the fulfilment of the Contract; (ii) which are publicly known at the time Supplier receives them or which subsequently become publicly known through no action of Supplier itself; (iii) which were already known to Supplier prior to its initial activity for Customer and for which no duty to observe secrecy applies; (iv) which is made accessible to Supplier by third parties and for which no duty to observe secrecy applies or (v) which Supplier is obliged to disclose by mandatory law or by legally binding instruction of a court of law or a public authority. Insofar as Supplier wishes to invoke one of the above exceptions, the burden of proof for the existence of the factual preconditions for such exception shall lie with Supplier.

13.3 Supplier shall not retain any Customer Data for longer than necessary to carry out the Services or than determined by Customer. Immediately after termination of the Contract or at any time on Customer's demand, Supplier shall, at the choice of Customer, immediately deliver to Customer all copies of such data provided by Customer to Supplier for the purposes of the Contract or received otherwise by Supplier while carrying out the Services and/or delete securely all Customer Data from its database. Supplier shall certify to Customer that it has not retained any copies of Customer Data with a written confirmation of destruction. Such confirmation shall be signed by duly authorized signatories of Supplier.

13.4 With regard to any data or information belonging to Customer or its Affiliates relating to an identified or identifiable individual or legal entity or any other entity which is subject to applicable data protection or privacy laws and regulations or being qualified as Personally Identifiable Information within the meaning of the applicable laws ("Personal Data"), Supplier will comply with all applicable data protection and privacy laws and regulations. In addition to the other stipulations in this Clause 13 the following applies:

13.4.1 Supplier shall not process Personal Data in or transfer Personal Data to a country with a level of data protection that is not at least equivalent with the level of data protection that applies within the country of origin of the Personal Data without Customer's prior written consent. Upon Customer's request and where required by applicable law, in particular if Customer or its Affiliates are located in Switzerland or in a country which is a Member State of the European Union (EU) or another signatory to the Agreement on the European Economic Area (EEA), Supplier agrees to enter into a separate data transfer agreement (EU Standard Contractual Clauses/Swiss Data Processing Agreement)

with Customer and/or its Affiliates for the transfer of Personal Data to third countries.

13.4.2 Supplier shall inform Customer without delay about serious incidents arising in the course of normal operations, suspicions of breaches of data privacy or other irregularities regarding the processing of Customer's or its Affiliates' Personal Data. In such cases Supplier and Customer shall agree on the further handling of the Personal Data. Supplier shall inform Customer without delay about checks performed and measures taken by a supervisory authority. This also applies regarding investigations into administrative or criminal offences.

13.4.3 Supplier will comply with any request by Customer to access, correct, block or delete Personal Data insofar as Customer is obliged to such request by law.

13.4.4 In case the legislation of a country in which Supplier provides its Services to Customer or its Affiliates requires a contract governing data privacy topics which are not covered by this Clause 13, Supplier agrees to enter into such contract.

13.5 Supplier agrees that Customer shall be allowed to provide any information received from Supplier to any other ABB Affiliate.

13.6 The obligation to Confidentiality and Data Protection exists for an indefinite period of time and therefore this Clause 13 shall survive the expiration or termination of the Contract for any reason.

13.7 Pursuant to the terms of the Organic Personal Data Protection Act 15/1999 of December 13 (LOPD) and the corresponding regulations, Customer hereby serves notice that the personal data provided by Supplier will be filed by Asea Brown Boveri S. A., with headquarters in Calle San Romualdo 13, 28037 Madrid, Spain, and will be used for the purpose of maintaining the Contractual Relationship, overseeing and administering purchases and administering procurement services. Supplier expressly authorizes the use of its personal data for such purpose as well as cession and transfer of personal data both nationally and internationally within the ABB Group of companies, active in the field of power and automation technologies, for the above stated purpose. The personal data is stored in accordance with established principles of confidentiality and security measures. Customer hereby also informs Supplier that it may exercise its rights of access, modification, cancellation, correction or opposition in accordance with LOPD by notifying Customer at the above specified address, to the attention of Group Function Legal and Integrity.

## 14. LIABILITY AND INDEMNITY

14.1 Without prejudice to applicable mandatory law, Supplier shall compensate/indemnify Customer for all damages and losses in connection with the Services whether or not Supplier may have been negligent or at fault (i) for Supplier's breaches of the Applicable Terms and Conditions, and (ii) for any claim, except for IPR Indemnification for which Clause 11 (Intellectual Property Right Infringements) exclusively applies, made by a third party (including employees of Supplier) against Customer in connection with the Services and to the extent that the respective liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Services delivered by Supplier and/or its sub-contractors. Upon Customer's request Supplier shall defend Customer against any third party claims arising out of or in connection with the Services.

14.2 Supplier shall be responsible for the control and management of all of its employees, its suppliers and/or its sub-contractors, and it shall be responsible for the acts, omissions, negligence or obligations of any of its employees, suppliers and/or sub-contractors, its agents, servants or workmen as fully as if they were the acts, omissions, negligence or obligations of Supplier.

14.3 The provisions of this Clause 14 (Liability and Indemnity) shall survive any performance, acceptance or payment pursuant to this ABB GTC/Services and shall extend to any substituted or replacement Services delivered by Supplier to Customer.

14.4 Unless otherwise expressly stated in the respective Order, Supplier shall maintain in force, and upon request provide evidence of, adequate

general liability insurance, statutory worker's compensation/employer's liability insurance and where applicable goods transit insurance with reputable and financially sound insurers. Nothing contained in this Clause 14 (Liability and Indemnity) shall relieve Supplier from any of its contractual or other legal liabilities. The insured amount cannot be considered nor construed as limitation of liability.

14.5 Customer reserves the right to set off any claims under the Order against any amounts owed to Supplier.

## 15. TERM AND TERMINATION

15.1 The Contractual Relationship between the Parties or an Order placed under the ABB GTC/Services may be terminated for convenience in whole or in part by Customer upon giving Supplier thirty (30) calendar days written notice, unless otherwise expressly stated in the relevant Order. In such event Customer shall pay to Supplier the value of the already performed Services and proven direct costs reasonably incurred by Supplier for the unperformed Services, however in no event more than the agreed purchase price for the Services under the respective Order. No further compensation shall be due to Supplier. Compensation for any expenditures and materials made with regard to the unperformed Services shall be expressly excluded.

15.2 In the event of Supplier's breach of the Applicable Terms and Conditions, such as e. g. a breach of warranty, Customer shall be entitled to terminate the respective Contractual Relationship or an Order placed under the ABB GTC/Services if Supplier fails to take adequate and timely actions to remedy a breach as requested by Customer in accordance with Clause 10 (Remedies). In such event, Customer shall have no obligation to compensate Supplier for the already performed Services and Supplier shall be obliged to pay back to Customer any remuneration received from Customer for the performed Services.

15.3 Customer shall have the right to terminate the Order and/or Contractual Relationship with immediate effect forthwith by notice in writing to Supplier in the event that an interim order is applied for or made, or a voluntary arrangement approved, or a petition for a bankruptcy order is presented or a bankruptcy order is made against Supplier or any circumstances arise which entitle the court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order or other similar or equivalent action is taken against or by Supplier by reason of its insolvency or in consequence of debt.

15.4 Upon termination Supplier shall immediately and at Supplier's expense safely return to Customer all respective Customer property (including any documentation, data, and applicable Intellectual Property) and Customer information then in Supplier's possession or under Supplier's control and provide Customer with the complete information and documentation about the already performed Services.

## 16. FORCE MAJEURE

16.1 Neither Party shall be liable for any delay in performing or for failure to perform its obligations under a respective Order if the delay or failure results from an event of "Force Majeure". For clarification, Force Majeure means an event that was not foreseeable by the affected Party at the time of execution of the respective Order, is unavoidable and outside the control of the affected Party, and for which the affected Party is not responsible, provided such event prevents the affected Party from performing the obligations under the respective Order despite all reasonable efforts, and the affected Party provides notice to the other Party within five (5) calendar days from occurrence of the respective event of Force Majeure.

16.2 If an event of Force Majeure occurs which exceeds thirty (30) calendar days either Party shall have the right to terminate the relevant Order forthwith by written notice to the other Party without liability to the other Party. Each Party shall use its reasonable endeavours to minimise the effects of any event of Force Majeure.

## 17. ASSIGNMENT AND SUB-CONTRACTING

17.1 Supplier shall not assign, transfer, or encumber an Order or any parts thereof (including any monetary receivables from Customer) without prior written approval of Customer.

17.2 Customer may at any time assign, transfer, encumber, sub-contract or deal in any other manner with all or any of its rights or obligations under the respective Order and/or the Applicable Terms and Conditions to any of its own Affiliates.

## 18. NOTICES

Any notice shall be given by sending the same by registered mail, courier, fax or by e-mail to the address of the relevant Party as stated in the Order or to such other address as such Party may have notified in writing to the other for such purposes. E-mail and fax expressly require written confirmation issued by the receiving Party. Electronic read receipts may not under any circumstances be deemed as confirmation of notice. Electronic signatures shall not be valid, unless expressly agreed in writing by duly authorised representatives of the Parties.

## 19. WAIVERS

Failure to enforce or exercise, at any time or for any period, any term of the Applicable Terms and Conditions does not constitute, and shall not be construed as, a waiver of such term and shall not affect the right later to enforce such term or any other term herein contained.

## 20. GOVERNING LAW AND DISPUTE SETTLEMENT

20.1 The Contractual Relationship and/or the Applicable Terms and Conditions (including, but not limited to the ABB GTC/Services) shall be governed by and construed in accordance with the laws of the country (and/or the state, as applicable) of Customer's legal registration, however under exclusion of its conflict of law rules and the United Nations Convention on International Sale of Goods.

20.2 For domestic dispute resolution matters, whereby Customer and Supplier are registered in the same country, any dispute or difference arising out of or in connection with the Contractual Relationship and/or the Applicable Terms and Conditions (including this ABB GTC/Services), including any question regarding its existence, validity or termination or the legal relationships established thereby, which cannot be settled amicably, shall be submitted to the jurisdiction of the competent courts of Customer's registration, unless other courts or arbitration are agreed in writing between the Parties.

20.3 For cross border dispute resolution matters whereby Customer and Supplier are registered in different countries, unless agreed otherwise in writing between the Parties, any dispute or difference arising out of or in connection with the Contractual Relationship and/or the Applicable Terms and Conditions (including this ABB GTC/Services), including any question regarding its existence, validity or termination or the legal relationships established thereby, which cannot be settled amicably, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The place of arbitration shall be the location where Customer is registered, unless otherwise agreed in writing. The language of the proceedings and of the award shall be English. The decision of the arbitrators shall be final and binding upon both Parties, and neither Party shall seek recourse to an ordinary state court or any other authority to appeal for revisions of the decision.

20.4 In case of any dispute, the defeated Party shall reimburse the succeeding Party for attorney's fees and other costs reasonably incurred in connection with the dispute.

## 21. SEVERABILITY

The invalidity or unenforceability of any term or of any right arising pursuant to the Applicable Terms and Conditions shall not adversely affect the validity or enforceability of the remaining terms and rights, and the Applicable Terms and Conditions 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.

## **22. SURVIVAL**

22.1 Provisions of the Applicable Terms and Conditions which either are expressed to survive its termination or from their nature or context it is contemplated that they are to survive such termination shall remain in full force and effect notwithstanding such termination.

22.2 The obligations set forth in Clauses 9 (Warranty), 10 (Remedies), 11 (Intellectual Property), 13 (Confidentiality and Data Protection) and 14 (Liability and Indemnity) shall survive termination.

## **23. ENTIRETY**

The Applicable Terms and Conditions and the Order constitute the entire Contractual Relationship and understanding between the Parties and replace any prior agreement, understanding or arrangement between the Parties, whether oral or in writing, except to the extent of fraud or any fraudulent misrepresentation.

## **24. RELATIONSHIP OF PARTIES**

24.1 The relationship of the Parties is that of independent parties dealing at arm's length and nothing in this underlying Contractual Relationship shall be construed to constitute Supplier as an agent or employee of Customer or so as to have any kind of partnership with Customer, and Supplier is not authorised to represent Customer as such.

24.2 Supplier shall be responsible for any activities performed by its employees in relation to the Services and/or the Work Products.

24.3 Supplier assumes full and exclusive responsibility for any accident or occupational disease occurred to its employees in relation to the provision of the Services.

24.4 It is expressly agreed that the Contractual Relationship does not imply any employment relationship between Customer and Supplier, or between Customer and Supplier's employees assigned to the execution of the Contractual Relationship. Customer shall remain free of any direct or indirect responsibility or liability for labour, social security or taxes with respect to Supplier and its employees assigned to the provision of the Services or Work Products under the Contractual Relationship.

24.5 Supplier shall hire or sub-contract in its own name all employees required to effectively provide the Services and/or the Work Products, who shall not, under any circumstances, act as Customer's employees.

24.6 Supplier shall be solely and exclusively responsible for any claims and/or lawsuits filed by its employees and hold Customer entirely safe and harmless from such claims and/or lawsuits. Supplier undertakes to voluntarily appear in court, recognizing its status as sole and exclusive employer, and to provide Customer with any and all requested documentation necessary to ensure proper legal defence of Customer in court.

24.7 Customer is authorized to make any payments due to Supplier's employees performing the Services under the Contractual Relationship, in order to avoid lawsuits. Such payments may be made through withholding Supplier's credits, through offsetting or in any other way. Supplier shall provide any support requested by Customer with regard to such payments and indemnify Customer for any payments made.

## **25. FURTHER ASSURANCES**

The Parties shall do and execute all such further acts and things as are reasonably required to give full effect to the rights given and the transactions contemplated by the respective Contractual Relationship and/or Applicable Terms and Conditions.

