

# ABB GENERAL TERMS AND CONDITIONS

## FOR PURCHASE OF PROJECT DESIGNED GOODS

### ABB GTC/PROJECT DESIGNED GOODS (2015-1 SPAIN)

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**DATE:** January 1<sup>st</sup>, 2015

**FOR:** ABB Contractors' purchase from Subcontractor of goods designed for integration into a Project, and optionally for the purchase of services for supervision of installation, commissioning and testing of such goods.

#### 1. DEFINITIONS AND INTERPRETATION

1.1 In this document, the following terms shall have the following meaning:

**“ABB Contractor”:** the purchasing ABB entity being party to the Subcontract;

**“ABB Contractor Data”:** any data or information acquired by Subcontractor in preparation of or during the fulfilment of the Subcontract, irrespective of whether such data or information relates to ABB Contractor, its Affiliates or their respective customers or suppliers, including but not limited to all technical or commercial know-how, drawings, specifications, inventions, processes or initiatives which are of a confidential nature as well as data or information belonging to ABB Contractor or its Affiliates (i) 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, and/or (ii) being qualified as “personal data”, “personal information”, or “personally identifiable information” within the meaning of the applicable laws;

**“ABB GTC/Project Designed Goods”:** the present ABB General Terms and Conditions for Purchase of Project Designed Goods (2015-1 Spain);

**“Acceptance Test Certificate”:** the document issued by ABB Contractor in accordance with Clause 8.8 below;

**“Affiliate”:** 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;

**“Client”:** the person, firm or company who has employed or will employ ABB Contractor for the execution of the Project;

**“Delivery”:** delivery of the Project Designed Goods Free Carrier FCA (named place of delivery as specified in the Subcontract) Incoterms 2010;

**“Effective Date”:** the day when the Subcontract comes into full force and effect as stated in the Subcontract;

**“Embedded Software”:** software necessary for operation of the Project Designed Goods and embedded in and delivered as integral part of the Project Designed Goods, however excluding any other software, which shall be subject to a separate licence agreement;

**“Final Acceptance Certificate”:** the document issued by ABB Contractor to Subcontractor in accordance with the provisions of Clause 8.10 below;

**“Intellectual and Industrial Property (Rights)”:** 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, Subcontractor 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;

**“Main Contract”:** the contract entered into between Client and ABB Contractor in respect of the Project;

**“Open Source Software”:** publicly available and accessible software which can be used, modified and further developed by everybody, however always in compliance with the relevant publicly available underlying licence terms and conditions;

**“Order”**: ABB Contractor’s purchase order (PO) issued to Subcontractor requesting the supply of the Project Designed Goods as specified in the Order, which is subject to the ABB GTC/Project Designed Goods and the Special Terms and Conditions, as the case may be. An Order can be placed either (i) as an electronic Order, or (ii) as a written Order; in both cases the Order shall contain a reference to the ABB GTC/Project Designed Goods;

**“Party”**: either ABB Contractor or Subcontractor, collectively referred to as “Parties”;

**“Project”**: the project to be executed by ABB Contractor under the Main Contract;

**“Project Designed Goods”**: all material, components, machinery, equipment, supplies, Subcontractor Documentation and Services as per Clause 3.16, to be delivered as specified in the Subcontract;

**“Provisional Acceptance Certificate”**: the certificate issued, as the case may be, by Client or ABB Contractor which evidences that the Project has met the performance criteria as specified in the Main Contract;

**“Schedule”**: the time for completion of the Delivery as specified in the Subcontract;

**“Site”**: the location where the Project is to be completed;

**“Subcontract”**: a written contract, comprising of:

- Subcontract Execution Document,
- Special Terms and Conditions,
- ABB GTC/Project Designed Goods,
- Annexes,

and/or the Order, which is accepted by Subcontractor (either expressly by written statement or impliedly by fulfilling the Subcontract in whole or in part);

**“Subcontractor”**: the party of the Subcontract responsible for supplying the Project Designed Goods;

**“Subcontractor Documentation”**: any HSE, operation, training and maintenance manuals, user guides, drawings, calculations, technical data, logic diagrams, progress reports, quality confirmation certificates, bills of lading, certificates of origin, export authorizations and licences, and any such other documents as required under the Subcontract and/or applicable laws;

**“Subcontract Price”**: the price to be paid by ABB Contractor to Subcontractor as specified in the Subcontract;

**“Variation Order”**: a change to the Subcontract such as to alter the Schedule, and to amend, to omit, to add to, or otherwise to change the Project Designed Goods or any parts thereof.

1.2 Unless otherwise specified in the present ABB GTC/Project Designed Goods or the Subcontract:

1.2.1 References to Clauses are to Clauses of the ABB GTC/Project Designed Goods;

1.2.2 Headings to Clauses are for convenience only and do not affect the interpretation of the ABB GTC/Project Designed Goods;

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

1.3 Capitalized terms used in the ABB GTC/Project Designed Goods and the Subcontract shall have the meaning and shall be interpreted in the way described under Clause 1.1 above or as otherwise expressly defined in the ABB GTC/Project Designed Goods, or the Subcontract.

## 2. APPLICATION OF TERMS

2.1 The Subcontract, including the ABB GTC/Project Designed Goods, shall be the exclusive terms and conditions upon which ABB Contractor is willing to deal with Subcontractor, and the terms of the Subcontract, including the ABB GTC/Project Designed Goods, shall govern the contractual relationship between ABB Contractor and Subcontractor.

2.2 No terms or conditions endorsed upon, delivered with or contained in Subcontractor’s quotations, acknowledgements or acceptances, specifications or similar documents will form part of the Subcontract,

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

2.3 Any amendment to the Subcontract or deviations from the provisions of the Subcontract shall have no effect unless expressly agreed in writing by the Parties.

## 3. SUBCONTRACTOR’S RESPONSIBILITIES

3.1 Subcontractor shall supply the Project Designed Goods, including the Subcontractor Documentation:

3.1.1 in accordance with the applicable laws and regulations, including but not limited to statutes, ordinances, permits or approvals (collectively, the “Applicable Laws”) of any federal, state, local or other authority or labour union applicable to the Project Designed Goods, and shall keep ABB Contractor indemnified against all penalties and liabilities of any kind for non-compliance with any such Applicable Laws.

To the extent that such regulations are advisory rather than mandatory, the standard of compliance to be achieved by Subcontractor shall be in compliance with the generally accepted best practice of the relevant industry. The Schedule for the Delivery of the Project Designed Goods and the Subcontract Price shall be adjusted to take account of any increase or decrease in cost or delay resulting from a change in the Applicable Laws which materially affect Subcontractor in the performance of its obligations under the Subcontract, provided however that adjustments relevant to the Delivery of the Project Designed Goods are obtained by ABB Contractor from Client under the Main Contract;

3.1.2 in accordance with the quality standards stated under Clause 11.1 and further specified in the Subcontract;

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

3.1.4 on the dates specified in the Schedule;

3.1.5 in the quantity specified in the Subcontract; and

3.1.6 by skilled, experienced and competent engineers, foremen and labour, hired in numbers necessary for the proper and timely Delivery of the Project Designed Goods.

3.2 Subcontractor shall not substitute or modify any of the Project Designed Goods or make any changes to the Project Designed Goods without ABB Contractor’s prior written approval.

3.3 Subcontractor shall carry out and be responsible for the design and engineering of the Project Designed Goods. If during the approval procedure ABB Contractor/Client requires any modifications of the submitted design in the frame of the completeness and functionality of the Project Designed Goods, such modifications shall be deemed to be included in the Subcontract Price. Subcontractor shall prepare drawings, calculations, software programs, samples, patterns, models, operation and maintenance manuals, and other Subcontractor Documentation and information of a similar nature, in sufficient detail to satisfy all Applicable Laws and regulatory approvals and to provide ABB Contractor and Client and other persons concerned with sufficient information to operate, install, commission, repair, alter, maintain and otherwise use the completed Project Designed Goods.

3.4 Subcontractor must obtain prior approval from ABB Contractor of any transport company (including the vehicles such as trucks, aircrafts, vessels etc.) which Subcontractor intends to use for the transportation of the Project Designed Goods. Unless ABB Contractor denies approval within ten (10) calendar days of receipt of the list of transport companies including the vehicles intended to be used, such list shall be deemed approved by ABB Contractor. Vessels used for transportation shall be less than fifteen (15) years old.

3.5 Subcontractor shall satisfy itself as to all aspects of the Project insofar as they affect the Project Designed Goods or the execution of the Subcontract.

3.6 Subcontractor’s failure to obtain all information required shall not relieve Subcontractor neither from the responsibility of estimating properly the cost of delivering the Project Designed Goods, nor from the responsibility for additional costs arising out of or in connection

with such omission, nor from the responsibility for the performance of the Subcontract.

3.7 Subcontractor shall be deemed to have examined and taken into consideration all relevant conditions, risks, contingencies, legal requirements, necessary schedules, drawings and plans and all other circumstances which may influence or affect the Project Designed Goods or its obligations under the Subcontract, and to have obtained on its own responsibility all additional information and details which Subcontractor requires for the execution and completion of the Subcontract. ABB Contractor shall not be responsible for any costs or losses due to failure of Subcontractor to obtain such information.

3.8 Subcontractor shall give all notices and obtain and pay for all permits, visas, licences and fulfil all other requirements necessary for the supply of the Project Designed Goods.

3.9 Subcontractor shall ensure that the Project Designed Goods are contained, packaged and/or marked in a manner that will preserve and protect the Project Designed Goods until risk transfers to ABB Contractor under the Subcontract. In addition, Subcontractor shall comply with any such packing and marking standards as required under the Special Terms and Conditions.

3.10 In the event that Subcontractor is required to have access to the Site, such access shall be subject to ABB Contractor's prior written approval. ABB Contractor shall grant Subcontractor access to the respective portions of the Site (as may be required in accordance with the Schedule) to enable Subcontractor to perform its obligations under the Subcontract.

3.11 Subcontractor shall pay and be responsible for the suitability and availability of access routes as well as for any special or temporary rights of way required by, for or in connection with performance of its obligations under the Subcontract. Subcontractor shall take precautions to keep all public or private roads or tracks clear of any spillage or droppings from its traffic. All such spillage or droppings which occur shall be cleared immediately at Subcontractor's risk and expense.

3.12 Subcontractor shall bear the risk of loss of or damages to the Project Designed Goods until Delivery and be responsible for any loss of or damages to the Project Designed Goods caused by Subcontractor after Delivery.

3.13 Subcontractor shall co-operate with ABB Contractor's request in scheduling and performing the Subcontract to avoid conflict or interference with work provided by other contractors and third parties at Site.

3.14 If Subcontractor's performance depends on proper provision of equipment or execution of works by ABB Contractor, Client or third parties, Subcontractor shall, prior to proceeding with the affected part of the Subcontract, promptly report in writing to ABB Contractor any apparent discrepancies or defects in equipment or execution of work or material. Otherwise such equipment or execution of works shall be deemed to be accepted by Subcontractor.

3.15 Subcontractor shall be responsible for any activities performed by its employees in relation to the Subcontract, and in particular the following shall apply:

3.15.1 Subcontractor assumes full and exclusive responsibility for any accident or occupational disease occurred to its employees in relation to the performance of the Subcontract.

3.15.2 It is expressly agreed that the Subcontract does not imply any employment relationship between ABB Contractor and Subcontractor, or between ABB Contractor and Subcontractor's employees assigned to the execution of the Subcontract. ABB Contractor shall remain free of any direct or indirect responsibility or liability for labour, social security or taxes with respect to Subcontractor and its employees assigned to the performance of the Subcontract.

3.15.3 Subcontractor shall hire in its own name all employees required to perform effectively the Subcontract, who shall under no circumstances act as ABB Contractor's employees.

3.15.4 Subcontractor shall be solely and exclusively responsible for any claims and/or lawsuits filed by its employees and – unless caused by ABB Contractor's gross negligence or intentional act – hold ABB Contractor entirely safe and harmless from such claims and/or lawsuits. Subcontractor undertakes to voluntarily appear in court, recognizing its status as sole and exclusive employer, and to provide ABB Contractor with any and all requested documentation necessary to ensure proper legal defence of ABB Contractor in court.

3.15.5 ABB Contractor is authorized to make any payments due to Subcontractor's employees performing the Subcontract, in order to avoid lawsuits. Such payments may be made through withholding Subcontractor's credits, through offsetting or in any other way. Subcontractor shall provide any support requested by ABB Contractor with regard to such payments and indemnify ABB Contractor for any payments made.

3.16 In the event ABB Contractor orders services for the Project Designed Goods to be performed by Subcontractor or any of its sub-suppliers, the following provisions shall apply:

3.16.1 "Services": means all services to be executed by Subcontractor or any of its sub-suppliers and all other undertakings, obligations and responsibilities of Subcontractor specified in the Subcontract. Without limiting the generality of the foregoing, Services shall include the supervision of the proper installation, commissioning and testing of the Project Designed Goods. Subcontractor shall co-ordinate the performance of the Services with ABB Contractor's Site management, taking into account the conditions prevailing on the Site. Subcontractor shall supply all equipment relevant to the Services to be provided and special tools of whatever kind, commissioning spares and consumables required for these Services. For the avoidance of doubt, special tools shall include all items required to work on the instrumentation and the control equipment and to install, set-up and configure the controls and transmitters provided with the Project Designed Goods. All spare parts, special tools and consumables shall become the property of ABB Contractor.

3.16.2 Personnel to execute Services: Subcontractor shall in a timely manner obtain and pay for all permits, licenses, visas and approvals necessary to allow its personnel to execute the Services in accordance with the Schedule. Personnel shall comply with particular country specific travel safety instructions and/or restrictions as provided by ABB Contractor. Subcontractor shall employ and provide sufficient number of competent and experienced personnel for the execution of the Services. Upon ABB Contractor's request Subcontractor shall remove forthwith from the Site any person who, in the opinion of ABB Contractor, misconducts or is incompetent or negligent. Any person so removed shall be replaced within fifteen (15) calendar days by a competent substitute. All costs relating to such removal shall be borne by Subcontractor. Subcontractor shall employ only persons free from contagious diseases. Subcontractor shall, if requested by ABB Contractor, perform medical examination of its employees and provide ABB Contractor with the results of such examination, unless such provision would violate applicable laws.

3.16.3 Site conditions: Subcontractor shall satisfy itself as to the specifics of the Site, and all aspects thereof insofar as they affect the execution of the Services. Subcontractor shall also satisfy itself as to the means of access to the Site, the accommodation which may be required, the extent and nature of work and materials necessary for execution and completion of the Services, and whether Subcontractor has reasonably considered all such aspects in the Subcontract Price.

3.16.4 Co-operation with others: ABB Contractor may request Subcontractor to nominate and use a local sub-supplier to provide Services in the country of Site and to enter into the respective supply agreement with such sub-supplier. If Subcontractor nominates a sub-supplier for this purpose, Subcontractor warrants and undertakes to ABB Contractor that Subcontractor will coordinate its respective duties and obligations with the duties and obligations of that sub-supplier. Subcontractor will also ensure that Subcontractor and its sub-supplier jointly provide

the supervision of the installation, commissioning of the Project Designed Goods and perform all work incidental thereto and/or otherwise necessary to ensure that the Project Designed Goods are completed and operational in accordance with the Subcontract.

#### **4. HEALTH, SAFETY AND ENVIRONMENT (HSE)**

4.1 Subcontractor shall comply and ensure compliance by any of its employees and subcontractors with all applicable laws relating to HSE throughout the performance of the Subcontract.

4.2 Subcontractor shall comply with (i) ABB Contractor's HSE instructions for the Site and ABB's Code of Practice for Safe Working (as referred to in the Special Terms and Conditions), (ii) Client's instructions concerning HSE at Site and (iii) applicable industry standards and good engineering practice.

4.3 Subcontractor shall allocate sufficient and qualified HSE resources to satisfy its obligations with regard to HSE. Resources allocation shall be reviewed periodically by Subcontractor and shared with ABB Contractor to ensure HSE requirements can be met. Subcontractor shall ensure that all its personnel, and its subcontractors' personnel, working on Site shall have received relevant training and induction before being allowed to work on Site. Subcontractor shall immediately remove from Site any person who, in ABB Contractor's opinion, fails to comply with the provisions of the relevant legislation, regulations and rules as appropriate or such other HSE legislation, which from time to time may be in force.

4.4 Subcontractor shall be solely responsible for the health and safety of all its employees and subcontractors at Site and shall immediately advise ABB Contractor and the relevant authority, if so required, of the occurrence of any accident, incident or near-miss on or about the Site or otherwise in connection with the provision of the Project Designed Goods. Within twenty four (24) hours after the occurrence of any such accident, incident or near-miss, Subcontractor shall furnish ABB Contractor with a written report, which shall be followed within fourteen (14) calendar days by a final report. Subcontractor shall also provide such a report to the appropriate authority when required. This procedure shall not relieve Subcontractor from the full responsibility to protect persons and property, and from its liability for damages.

4.5 Subcontractor shall notify ABB Contractor of all hazardous materials (as such term is defined in applicable laws or regulations) which are contained in the Project Designed Goods. Subcontractor shall furnish ABB Contractor with copies of all applicable material safety data sheets and provide any appropriate special handling instructions for the Project Designed Goods no later than ten (10) calendar days prior to the Delivery date.

#### **5. VARIATION ORDERS**

5.1 ABB Contractor may issue, in the standard form provided in the Annexes, Variation Orders to Subcontractor to alter the Schedule, to amend, omit, add to, or otherwise change the Project Designed Goods or any parts thereof. Subcontractor shall carry out such Variation Orders only upon receipt of a written Variation Order and continue to be bound by the provisions of the Subcontract. The value of each Variation Order shall then be added to or deducted from the Subcontract Price, as appropriate and specified in Clause 5.2. The Variation Order shall, as the case may be, express the amount of time by virtue of which the Schedule shall be shortened or extended.

5.2 Payments or credits for any variations covered by a Variation Order shall be calculated in accordance with the following order: (i) agreed unit price list as defined in the Subcontract, (ii) lump sum to be agreed between ABB Contractor and Subcontractor, (iii) on a time and material basis or, (iv) if necessary, as a combination of these methods. If the agreed unit price list does not cover the subject matter of the Variation Order, an additional price shall be determined by ABB Contractor on the basis of prices in the list for similar goods, and added to the unit price list.

5.3 Variations requested by ABB Contractor in a reasonable time period shall not result in extension of time for performance of Subcontractor's obligations.

5.4 If Subcontractor believes that any order, request, act or omission of ABB Contractor involves or constitutes a change to the Subcontract, Subcontractor shall within five (5) calendar days of such order, request, act or omission forward a written proposal for a Variation Order in respect of such change to ABB Contractor. Subcontractor shall not be entitled to additional compensation in respect of costs and/or time incurred, unless ABB Contractor issues a Variation Order as a result of Subcontractor's proposal and Subcontractor complies strictly with the notice provisions of this Clause.

5.5 If either ABB Contractor or Client requires any modifications to the design and engineering of the Project Designed Goods to ensuring completeness and functionality of the Project, such modifications shall not constitute a Variation Order, and costs shall be included in the Subcontract Price. Time extension for such modifications shall only be granted to the extent received by ABB Contractor from Client. In addition, if either ABB Contractor or Client requires a specific solution to be applied, such solution shall not constitute a Variation Order and shall be applied without additional costs for ABB Contractor, even if Subcontractor foresaw and submitted a different solution.

5.6 Subcontractor shall not postpone or delay the performance of a Variation Order on the grounds of dispute, or that it is subject to acceptance by Subcontractor, or agreeing to the value amount, and/or time extension to Schedule.

#### **6. DELIVERY**

6.1 The Delivery shall be in accordance with the Schedule. Partial delivery is not accepted unless confirmed or requested by ABB Contractor in writing.

6.2 Subcontractor shall submit for ABB Contractor's approval a detailed execution plan (including agreed milestones as specified in the Subcontract) for the performance of the Subcontract and shall assist ABB Contractor with regard to the scheduling and planning process, and cooperate with ABB Contractor in all respects of the Subcontract scheduling and planning.

6.3 Subcontractor must indicate latest at the time of acceptance of the Subcontract the customs tariff numbers of the country of consignment and the countries of origin for all Project Designed Goods. For controlled Project Designed Goods, the relevant national export control numbers must be indicated and, if the Project Designed Goods are subject to U.S. export regulations, the U.S. Export Control Classification Numbers (ECCN) or classification numbers of the International Traffic In Arms Regulations (ITAR) must be specified. 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.

6.4 Subcontractor shall give ABB Contractor ten (10) calendar days written advance notice of each Delivery and shall ensure that such Delivery is accompanied by a delivery note, which shall contain the following minimum information (unless required otherwise by ABB Contractor): the Order number, date of Order, number of packages including dimensions, weights and contents and, in the case of partial delivery, the outstanding balance remaining to be delivered.

6.5 Subcontractor (or its appointed carrier) shall provide ABB Contractor with such additional import/export documents as are requested by ABB Contractor together with a delivery note.

6.6 Ownership of Project Designed Goods shall pass on to ABB Contractor at whichever is the earlier of the following times: (i) when loaded on the means of transport to be used for carriage of the Project Designed Goods, or (ii) progressively as payments for the Project Designed Goods are made by ABB Contractor, or (iii) when ownership transfer is required from ABB Contractor by Client under the Main Contract.

6.7 As soon as materials provided by either ABB Contractor or Subcontractor arrive at Subcontractor's premises, the Site or other place where the Project Designed Goods are being fabricated, Subcontractor shall mark them with an identification number and ABB Contractor's name, and as far as possible keep them separate from other items.

6.8 Unless requested otherwise, Subcontractor shall at least monthly in the form requested by ABB Contractor, report the status of the supply of the Project Designed Goods. The report shall provide a statement regarding the timely supply of the Project Designed Goods and steps proposed for expediting whenever required. The report shall be provided to ABB Contractor within five (5) calendar days from the end of the month covered by the report. If the supply of any part of the Project Designed Goods is behind the Schedule, Subcontractor shall submit in writing a recovery plan specifying its activities for reaching compliance with the Schedule. Upon ABB Contractor's request, Subcontractor shall provide ABB Contractor at any time with all information regarding the supply of the Project Designed Goods. ABB Contractor shall have the right to withhold payments under the Subcontract if Subcontractor fails to submit any of the reports.

## 7. TIME FOR DELIVERY, DELAY

7.1 If Subcontractor does not comply with the Schedule, ABB Contractor reserves the right to instruct Subcontractor in writing to expedite its performance under the Subcontract. Subcontractor shall take such measures (in accordance with ABB Contractor's instructions) as required for acceleration of progress so as to complete the supply of the Project Designed Goods, or the relevant part thereof, on time. Subcontractor shall not be entitled to any additional payment for taking such steps to accelerate the work to meet the Schedule. Subcontractor shall notify ABB Contractor in writing within twenty four (24) hours of the occurrence and cause of any delay and also to make every effort to minimise or mitigate the costs or the consequences of such delay.

7.2 If Subcontractor fails to deliver the Project Designed Goods in accordance with the Schedule, Subcontractor shall pay liquidated damages to ABB Contractor for this default. The liquidated damages shall be payable at a rate specified in the Subcontract. Subcontractor shall pay the liquidated damages upon written demand or upon receipt of an invoice from ABB Contractor. The amount of liquidated damages may be deducted by ABB Contractor from any payments due or which may become due to Subcontractor, or from Subcontractor's financial guarantees, without prejudice to any other recovery method. The payment of such liquidated damages shall not relieve Subcontractor from any of its obligations and liabilities under the Subcontract.

7.3 If the delay in Delivery is such that ABB Contractor is entitled to maximum liquidated damages and if the Project Designed Goods are still not delivered, ABB Contractor may in writing demand Delivery within a final reasonable period which shall not be less than one week.

7.4 If Subcontractor does not deliver within such final period and this is not due to any circumstance for which ABB Contractor is responsible, then ABB Contractor reserves the right to:

- 7.4.1 terminate the Subcontract pursuant to Clause 19 (Termination);
- 7.4.2 refuse any subsequent delivery of Project Designed Goods which Subcontractor attempts to make;
- 7.4.3 recover from Subcontractor any costs or expenditure incurred by ABB Contractor in obtaining the Project Designed Goods in substitution from another Subcontractor;
- 7.4.4 claim in addition to liquidated damages under Clause 7 for any additional costs, losses or damages incurred whatsoever by ABB Contractor which are reasonably attributable to Subcontractor's failure to comply with the Subcontract.

7.5 ABB Contractor shall also have the right to terminate the Subcontract by notice in writing to the Subcontractor, if it is clear from the circumstances that there will occur a delay in Delivery which under Clause 7 would entitle ABB Contractor to maximum liquidated damages.

## 8. TEST AND ACCEPTANCE OF PROJECT DESIGNED GOODS

8.1 Subcontractor shall perform tests as required in the Special Terms and Conditions, and any other tests required to meet regulations, codes and standards or deemed necessary by ABB Contractor to verify that the Project Designed Goods comply with the Subcontract.

8.2 At any time prior to Delivery and during Subcontractor's business hours, ABB Contractor and/or Client's nominee shall have the right to (i) inspect the Project Designed Goods and Subcontractor's manufacturing units upon providing reasonable notice, and/or (ii) witness factory test the Project Designed Goods, or any parts or materials thereof, as required in the Special Terms and Conditions. In addition, ABB Contractor and/or Client shall have the right to inspect and/or test the Project Designed Goods at Site.

8.3 If the results of such inspection or test cause ABB Contractor to be of the opinion that the Project Designed Goods do not comply or are unlikely to comply with the Subcontract, ABB Contractor shall inform Subcontractor and Subcontractor shall immediately take such action as is necessary to ensure compliance with the Subcontract. In addition Subcontractor shall carry out such necessary additional inspection or testing at Subcontractor's own cost whereby ABB Contractor and Client shall be entitled to be present. ABB Contractor's costs (including Client's costs) of attending such additional inspection and testing of the Project Designed Goods shall be for Subcontractor's account.

8.4 Subcontractor shall prepare and transfer to ABB Contractor within fifteen (15) calendar days from the Effective Date of the Subcontract a detailed schedule of all tests, including a drawing showing the test arrangement as well as a circuit diagram for the test procedure stating all instruments, equipment to be used, and indicating the estimated dates for the tests. Subcontractor shall furnish all instruments, labour, material and assistance required for inspection and witness of testing of the Project Designed Goods.

8.5 Subcontractor shall inform with a minimum of four (4) weeks advance notice in writing ABB Contractor when the Project Designed Goods are ready for the agreed inspections and tests.

8.6 The costs of any tests shall be included in the Subcontract Price.

8.7 In the event the Project Designed Goods do not pass the tests, the Parties shall prepare and sign a protocol after the acceptance test indicating all relevant test results and the deficiencies and defects preventing ABB Contractor from issuing the Acceptance Test Certificate. Subcontractor shall remedy the deficiencies and defects within the shortest time possible or by the date in ABB Contractor's Project Designed Goods defect notice.

8.8 ABB Contractor will issue an Acceptance Test Certificate when the Project Designed Goods have passed all applicable tests, including but not limited to factory tests, and Subcontractor has met all obligations under the Subcontract.

8.9 ABB Contractor in its sole discretion shall be entitled to issue the Acceptance Test Certificate as a conditional acceptance, despite deficiencies and defects identified during the inspection and testing program. In such case the conditional character and the respective deficiencies and defects shall be expressly described in the Acceptance Test Certificate, and Subcontractor shall remedy these deficiencies and defects within the shortest time possible, however not later than thirty (30) calendar days from the date of the (conditional) Acceptance Test Certificate. ABB Contractor is entitled to withhold any outstanding payments until all these deficiencies and defects have been remedied. Should Subcontractor fail to remedy the same within the thirty (30) calendar days' time period, the issued (conditional) Acceptance Test Certificate shall automatically be deemed to be null and void and ABB Contractor shall – without prejudice to any other rights or remedies it may have at law or under the Subcontract – be entitled (i) to treat the failure as a delay in completion, and (ii) to call any guarantees in its possession. The warranty period shall in no event commence under such (conditional) Acceptance Test Certificate. After all defects and

deficiencies have been remedied in due time, the Acceptance Test Certificate shall become effective.

8.10 ABB Contractor shall issue the Final Acceptance Certificate when all defects and deficiencies have been remedied, Subcontractor has met all obligations under the Subcontract and the warranty period has expired.

8.11 ABB Contractor in its sole discretion shall be entitled to issue the Final Acceptance Certificate as a conditional acceptance, despite deficiencies and defects identified during the inspection and testing program. In such case the conditional character and the respective deficiencies and defects shall be expressly described in the (conditional) Final Acceptance Certificate, and Subcontractor shall remedy these deficiencies and defects within the shortest time possible, however not later than thirty (30) calendar days from the date of the (conditional) Final Acceptance Certificate. ABB Contractor is entitled to withhold any outstanding payments until all these deficiencies and defects have been remedied. Should Subcontractor fail to remedy the same within the thirty (30) calendar days' time period, the issued (conditional) Final Acceptance Certificate shall automatically be deemed to be null and void and ABB Contractor shall – without prejudice to any other rights or remedies it may have at law or under the Subcontract – be entitled (i) to treat the failure as a delay in performance, (ii) to be compensated by Subcontractor for all costs, damages and losses incurred as a result of these deficiencies and defects, and (iii) to call any guarantees in its possession. After all defects and deficiencies have been remedied, the Final Acceptance Certificate shall become effective.

8.12 No certificate, consent, approval or acceptance by ABB Contractor or its representatives other than the Final Acceptance Certificate duly signed by ABB Contractor's authorized representatives shall neither be deemed to constitute final approval and acceptance of the Project Designed Goods nor relieve Subcontractor from any of its obligations under the Subcontract.

8.13 Subcontractor shall have available and provide at its own expense sufficient equipment, workmen and services as required to obtain from ABB Contractor the Acceptance Test Certificate and the Final Acceptance Certificate. Any extension of time requires written application of Subcontractor (including explanation of the reasons for not complying with the Schedule) and written approval of ABB Contractor.

8.14 ABB Contractor may under circumstances endangering the Project Designed Goods and/or the proper execution of the Subcontract, without any effect on the obligations of either Party under the Subcontract, take possession of any part of the Project Designed Goods prior to Delivery. Such possession shall not constitute acceptance of the Project Designed Goods and shall not relieve Subcontractor of any of its obligations and liabilities under the Subcontract.

8.15 Notwithstanding any approval, inspection, test or test sampling by ABB Contractor, Subcontractor shall remain fully responsible for the Project Designed Goods compliance with the Subcontract. This applies whether or not ABB Contractor has exercised its right of approval, inspection, testing and/or test sampling and shall not limit Subcontractor's obligations under the Subcontract. For the avoidance of doubt, approval, inspection, testing or test sampling of Project Designed Goods by ABB Contractor shall in no event exempt Subcontractor from or limit Subcontractor's warranties or liability in any way.

## **9. SUSPENSION OF THE SUBCONTRACT**

9.1 ABB Contractor shall have the right to suspend performance of the Subcontract at any time for convenience for a period of 90 calendar days in the aggregate without any compensation to Subcontractor. In case the suspension extends beyond 90 calendar days, Subcontractor shall be compensated by ABB Contractor for the direct and reasonable incurred costs of such suspension, such as cost of protection, storage and insurance. The agreed time for performance of the Subcontract or the concerned part thereof shall be extended by the time period of the suspension.

9.2 If the suspension of the Subcontract is caused or requested by Client, Subcontractor shall be entitled only to a compensation as specified in the Subcontract and to the extent paid by Client.

9.3 Subcontractor shall suspend the performance of the Subcontract or any part thereof, including postponing the Delivery, for such times and in such manner as ABB Contractor considers necessary (i) for proper HSE or execution of the Subcontract, or (ii) due to any default by Subcontractor, in which case Subcontractor shall bear all costs and be liable for the delay arising from such suspension.

9.4 During any suspension Subcontractor shall properly protect and secure the Project Designed Goods.

9.5 Subcontractor is obliged to make every effort to minimise the consequences of any suspension.

9.6 Subcontractor shall have no right to suspend performance of the Subcontract.

## **10. FORCE MAJEURE**

10.1 Neither Party shall be liable for any delay in performing or for failure to perform its obligations under the Subcontract if the delay or failure results from an event of "Force Majeure", provided that the affected Party serves notice to the other Party within five (5) calendar days from occurrence of the respective event of Force Majeure.

10.2 "Force Majeure" means the occurrence of any of the following events, provided that they are unforeseeable and beyond the control of the Party affected that results in the failure or delay by such Party of some performance under the Subcontract, in full or part: flood, earthquake, volcanic eruption, war (whether declared or not), or terrorism.

10.3 The delayed Party will provide continuous updates on status and efforts to resolve the delay, and will ultimately be entitled to an extension of time only, and no monetary compensation for the delay. Each Party shall use its reasonable endeavours to minimise the effects of any event of Force Majeure.

10.4 If an event of Force Majeure occurs which exceeds twelve (12) months either Party shall have the right to terminate the Subcontract forthwith by written notice to the other Party without liability to the other Party.

## **11. WARRANTY**

11.1 Subcontractor warrants that:

11.1.1 the Project Designed Goods comply with the Subcontract, including but not limited to the specifications as stipulated in the Subcontract, and with good engineering practices, and that they retain the functionality and performance as expected by Client, and remain free from rights of third parties, including Intellectual and Industrial Property Rights;

11.1.2 the Project Designed Goods are fit for the particular purpose of the Project, whether expressly or impliedly made known to Subcontractor in the Subcontract;

11.1.3 the Project Designed Goods are new and unused at the date of Delivery;

11.1.4 the Project Designed Goods are free and remain free from defects during the warranty period; and

11.1.5 the Project Designed Goods comply with Clauses 3.1.1 and 20 (Compliance, Integrity).

11.2 Subcontractor warrants that the Embedded Software does not contain hidden files, does not replicate, transmit, or activate itself without control of a person operating the computing equipment on which it resides, and does not contain licence activation or authorization key or other function, whether implemented by electronic, mechanical software, or other means, that restricts or may restrict use or access to the Embedded Software, and each Embedded Software logs any failure and assists incidents in a log file which may be reviewed online.

11.3 The warranty period shall be thirty six (36) months from the date ABB Contractor has obtained the Provisional Acceptance Certificate. If Provisional Acceptance Certificate cannot be achieved through no

fault of Subcontractor, the warranty period shall be forty eight (48) months from the date of issuance of Acceptance Test Certificate for the respective Project Designed Goods, and in the absence of such Acceptance Test Certificate, the warranty period shall be forty eight (48) months from Delivery.

11.4 In the event of a breach of warranty, the entire warranty period of Clause 11.3 shall be restarted upon Client's and/or ABB Contractor's written confirmation that the Project Designed Goods are no longer defective. In all other cases the warranty period shall be extended by a time period which is equal to the time period from ABB Contractor's notice of breach of warranty to Subcontractor until ABB Contractor notifies Subcontractor in writing that the breach has been successfully remedied. For all other parts of the Project Designed Goods which cannot be used for the purposes of the Project as a result of a defect or damage, the same warranty extension shall apply.

11.5 Subcontractor shall, during a period of three (3) years after expiry of the warranty period, remain responsible for and shall remedy any defects in the Project Designed Goods which have not been detected by inspections or tests carried out and did not otherwise become obvious before the expiry of the warranty period, but are the result of non-compliance of the Project Designed Goods with the Subcontract prior to the expiry of the warranty period (hidden/latent defects).

11.6 Subcontractor assigns, transfers and conveys to ABB Contractor all of its rights, title and interests under any and all warranties with respect to the Project Designed Goods.

11.7 In case of non-compliance with the warranty provided under this Clause 11, ABB Contractor shall be entitled to enforce one or more of the following remedies at Subcontractor's own expense and risk:

11.7.1 to give Subcontractor the opportunity to carry out any additional work necessary to ensure that the terms and conditions of the Subcontract are fulfilled within twenty (20) calendar days from ABB Contractor's notice. If not otherwise agreed in writing by the Parties, such remedial work requires acceptance by ABB Contractor;

11.7.2 to carry out (or to instruct a third party to carry out) any additional work necessary to make the Project Designed Goods comply with the Subcontract;

11.7.3 to obtain from Subcontractor prompt repair or replacement of the non-compliant Project Designed Goods by other Project Designed Goods conforming with the Subcontract. Any and all costs, including but not limited to costs of transportation to Site, disassembly, cleaning, upgrade, assembly, installation, testing, inspection, insurance, completion, and acceptance, which are connected with correcting defects or damages shall be to Subcontractor's account. This covers the time period until issuance of the Final Acceptance Certificate;

11.7.4 to refuse to accept any further Project Designed Goods, but without exemption from Subcontractor's liability for the defective Project Designed Goods for which ABB Contractor shall be entitled to a price reduction, instead of requiring their correction, replacement or removal. A Variation Order will be issued to reflect an equitable reduction in the Subcontract Price. Such adjustments shall be effected whether or not final payment has been made;

11.7.5 to claim such costs and damages as may have been sustained by ABB Contractor as a result of Subcontractor's breach or failure;

11.7.6 to terminate the Subcontract in accordance with Clause 19.1.

11.8 The rights and remedies available to ABB Contractor and contained in the Subcontract are cumulative and are not exclusive of any rights or remedies available under warranty, at law or in equity.

## 12. STEP IN

If Subcontractor (a) fails to deliver the Project Designed Goods or any part thereof in accordance with the Schedule or (b) fails to deliver the Project Designed Goods in accordance with any requirements as provided in the Subcontract and, within seven (7) calendar days after receipt of written notice from ABB Contractor, Subcontractor fails to take satisfactory actions (acceptable to ABB Contractor) to commence correction of such default or neglect with diligence and promptness,

ABB Contractor may, without prejudice to any other remedy or rights ABB Contractor may have, take the Project Designed Goods (or relevant part thereof) out of the hands of Subcontractor and employ other subcontractors to complete the Project Designed Goods (or relevant part thereof) or complete it by using its own resources. Any such work shall be performed at Subcontractor's risk and expense. ABB Contractor shall have the right to take possession at Subcontractor's premises of any uncompleted part of the Project Designed Goods and use all drawings, technical information related to the Project Designed Goods, materials, equipment and other property provided (or to be provided) or used by Subcontractor and use it as ABB Contractor deems fit in order to complete the Project Designed Goods. If the cost to ABB Contractor for so completing the Project Designed Goods shall exceed the amount which would have been due to Subcontractor if the Project Designed Goods had been completed by him, Subcontractor shall pay the amount of such excess to ABB Contractor or it will be deducted from any money due or money that will become due to Subcontractor or from any of Subcontractor's guarantees.

## 13. PRICES, PAYMENT TERMS, INVOICING

13.1 The Subcontract Price shall be deemed to cover the fulfilment by Subcontractor of all its obligations under the Subcontract and include the costs of the Project Designed Goods specified and the costs for everything, including but not limited to fees, taxes, duties, transportation, profit, overhead, licences, permits, and travel, whether indicated or described or not, which is necessary for the execution, completion, and warranty of the Project Designed Goods.

13.2 The prices stipulated in the Subcontract are fixed unless otherwise provided in a Variation Order.

13.3 The payment terms and the applicable procedures shall be specified in the Subcontract.

13.4 Subcontractor shall submit invoices complying with Subcontractor's and ABB Contractor's applicable local mandatory law, generally accepted accounting principles and ABB Contractor requirements set forth in the Subcontract, which shall contain the following minimum information: Subcontractor name, address and reference person including contact details (telephone, e-mail etc.); invoice date; invoice number; Order number (same as stated in the Order); Subcontractor number (same as stated in the Order); address of ABB Contractor; quantity; specification of Project Designed Goods supplied; price (total amount invoiced); currency; tax or VAT amount; tax or VAT number; Authorized Economic Operator and/or Approved Exporter Authorization number and/or other customs identification number, if applicable.

13.5 Invoices shall be accompanied by interim release of liens or privileges and shall be issued to ABB Contractor as stated in the Subcontract. Invoices shall be sent to the invoice address specified in the Subcontract. The submission of an invoice shall be deemed to be a confirmation by Subcontractor that it has no additional claims, except as may already have been submitted in writing, for anything that has occurred up to and including the last day of the period covered by such invoice.

13.6 Subcontractor shall make payment in due time for all equipment and labour used in, or in connection with, the performance of the Subcontract in order to avoid the imposition of any lien or privilege against any portion of the Project Designed Goods and/or the Project. In the event of the imposition of any such lien or privilege by any person who has supplied any such equipment or labour, or by any other person claiming by, through or under Subcontractor, Subcontractor shall, at its own expense, promptly take any and all action as may be necessary to cause such lien or privilege to be released or discharged. Subcontractor shall furnish satisfactory evidence, when requested by ABB Contractor, to verify compliance with the above. In the alternative, ABB Contractor may pay to release the lien and withhold such amounts from Subcontractor.

13.7 ABB Contractor shall have the right to withhold the whole or part of any payment to Subcontractor which, in the opinion of ABB Con-



tractor, is necessary for protection of ABB Contractor from loss on account of claims against Subcontractor, or failure by Subcontractor to make due payments to its sub-suppliers or employees, or not having paid taxes, dues and social insurance contributions. ABB Contractor reserves the right to set off such amount owed to Subcontractor, or withhold payment for Project Designed Goods not delivered in accordance with the Subcontract. However, Subcontractor shall not be entitled to set off any amounts owed by ABB Contractor to Subcontractor, unless prior approval has been granted by ABB Contractor in writing.

13.8 Unless otherwise agreed in writing (or instructed by ABB Contractor in writing), Subcontractor shall carry on and maintain the timely supply of the Project Designed Goods during arbitration and any dispute or disagreement with ABB Contractor, including, without limitation, a dispute or disagreement about ABB Contractor's withholding of payments otherwise due to Subcontractor.

#### **14. FINANCIAL GUARANTEES**

14.1 Subcontractor shall submit financial guarantees as required in the Special Terms and Conditions, within fifteen (15) calendar days from Effective Date of the Subcontract. The guarantees shall be issued by reputable banks accepted by ABB Contractor. The guarantees shall be unconditional, irrevocable and payable on first demand. Subcontractor's failure to provide such financial guarantees shall entitle ABB Contractor to claim compensation for costs and damages as may have been sustained by ABB Contractor as a result of Subcontractor's failure to provide such financial guarantees, without prejudice to any other rights ABB Contractor may have under the Subcontract. ABB Contractor may seek additional security from Subcontractor, such as a parent company or bank guarantee, in a form as provided in the Annexes.

14.2 The financial guarantees shall remain valid until issuance of the Final Acceptance Certificate by ABB Contractor. However, in case an advance payment guarantee is submitted, such guarantee shall remain valid until issuance of the Acceptance Test Certificate.

14.3 In the event the Parties agree on increased prices, the financial guarantee shall be increased proportionally within twenty (20) calendar days from ABB Contractor's written confirmation of the increase of the respective prices, or otherwise the equivalent amount shall be deducted from each invoice and become reimbursable upon issuance of the Final Acceptance Certificate.

14.4 All costs related to financial guarantees shall be for the account of Subcontractor.

#### **15. DOCUMENTATION**

15.1 Subcontractor shall at its expense:

15.1.1 submit, as part of the Project Designed Goods, the Subcontractor Documentation. Delay in submitting the Subcontractor Documentation is regarded a delay in supplying the Project Designed Goods and the consequences are as set out in Clause 7 (Time for Delivery, Delay);

15.1.2 prepare translation into English and/or any other language if so required by ABB Contractor;

15.1.3 immediately upon receipt of Client's and/or ABB Contractor's technical specification, carefully check such specifications and Subcontractor shall promptly notify ABB Contractor of any errors, omissions or discrepancies found in such specifications. ABB Contractor shall not bear any costs or liability in relation to any errors, omissions or discrepancies which Subcontractor ought to have found during its check;

15.1.4 provide ABB Contractor with updated copies of the drawings ("as-built") and specifications showing all changes and modifications made during the execution of the Subcontract.

15.2 Where certificates are required, such certificates shall be submitted by and at the expense of Subcontractor. Such submittal shall be made in accordance with ABB Contractor's instructions. Certificates shall be subject to review and approval by ABB Contractor, and Project Designed Goods represented by such certificates shall not be fabricated or delivered without such review and approval. Certificates shall

clearly identify the Project Designed Goods being certified and shall include but not be limited to the following information: Subcontractor's name, name of the item, manufacturer's name, and reference to the appropriate drawing, technical specification section and paragraph number, all as applicable.

15.3 All Subcontractor Documentation is subject to the provisions above as well as the review and approval by ABB Contractor.

15.4 Subcontractor shall not be entitled to any compensation for Project Designed Goods provided prior to such approval to the extent that Project Designed Goods have to be modified in the result of comments from ABB Contractor.

15.5 ABB Contractor shall approve or comment on Subcontractor Documentation within the number of days after receipt specified in the Subcontract, provided that the Subcontractor Documentation is in a status that enables ABB Contractor to decide if the submitted Subcontractor Documentation is to be approved or revised.

15.6 Subcontractor Documentation commented upon by ABB Contractor shall be corrected and resubmitted for approval within seven (7) calendar days from the date of receipt of the comments by Subcontractor.

15.7 Reviews and approvals by ABB Contractor do not constitute formal and final acceptance of the details, general design, calculations, analyses, test methods, certificates, materials or other concerned items of the Project Designed Goods and do not relieve Subcontractor from full compliance with its contractual obligations. Final acceptance of the Project Designed Goods is exclusively subject to issuance of Final Acceptance Certificate.

15.8 Any drawings and documents provided by ABB Contractor to Subcontractor shall remain the exclusive property of ABB Contractor and may not be used by Subcontractor for any other purpose than performing the Subcontract. Such drawings and documents must not be copied, reproduced or transmitted in whole or in part to any third party without the prior written consent of ABB Contractor. All drawings and documents provided by ABB Contractor to Subcontractor shall be returned to ABB Contractor upon ABB Contractor's request.

15.9 Subcontractor shall keep all Subcontractor Documentation at least for ten (10) years after Delivery or any such longer time required by applicable law.

#### **16. INTELLECTUAL AND INDUSTRIAL PROPERTY**

16.1 Subcontractor hereby grants ABB Contractor and/or Client, or undertakes to procure that ABB Contractor and/or Client is granted, a perpetual, irrevocable, transferable, sub-licensable, non-exclusive, royalty-free licence to use the Intellectual and Industrial Property Rights in the Project Designed Goods, including Subcontractor Documentation and including Embedded Software, if any.

16.2 In the event any Intellectual and Industrial Property Rights in the Project Designed Goods are to be transferred from Subcontractor to ABB Contractor or Client, the terms and conditions for such transfer shall be separately agreed in the Special Terms and Conditions.

16.3 In the event the Embedded Software contains or uses Open Source Software, Subcontractor must fully specify and inform ABB Contractor in writing and prior to Delivery about all Open Source Software implemented into or used by the Embedded Software. In the event that ABB Contractor does not approve Open Source Software components contained in or used by the Embedded Software, Subcontractor agrees to replace or substitute the affected Open Source Software component(s) contained in or used by the Embedded Software.

#### **17. LIABILITY AND INDEMNITY**

17.1 Subcontractor shall indemnify ABB Contractor and Client against all liabilities, losses, damages, injuries, cost, actions, suits, claims, demands, charges or expenses whatsoever arising in connection with death or injury suffered by persons employed by Subcontractor or any of its sub-suppliers.



17.2 Without prejudice to applicable mandatory law or unless otherwise agreed between the Parties, Subcontractor shall compensate/indemnify ABB Contractor and Client for all liabilities, losses, damages, injuries, cost, actions, suits, claims, demands, charges or expenses whatsoever arising out of or in connection with the performance of the Subcontract and/or the Project Designed Goods (i) for Subcontractor's breaches of the Subcontract, and (ii) for any claim made by a third party (including employees of Subcontractor) against ABB Contractor in connection with the Project Designed Goods and to the extent that the respective liability, loss, damage, injury, cost or expense was caused by or arises from acts or omissions of Subcontractor and/or from the Project Designed Goods.

17.3 In the event of infringements of third party Intellectual and Industrial Property Rights caused by or related to the Project Designed Goods:

17.3.1 Subcontractor shall reimburse ABB Contractor and Client for any liabilities, losses, damages, injuries, costs and expenses (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 such infringement. This obligation does not limit any further compensation rights of ABB Contractor or Client;

17.3.2 Without prejudice to ABB Contractor's right under the Subcontract, Subcontractor shall, upon notification from ABB Contractor at Subcontractor's cost (i) procure for ABB Contractor the right to continue using the Project Designed Goods; (ii) modify the Project Designed Goods so that they cease to be infringing; or (iii) replace the Project Designed Goods by non-infringing Project Designed Goods.

17.4 Subcontractor shall be responsible for the acts, omissions, defaults, negligence or obligations of any of its sub-suppliers, its agents, servants or workmen as fully as if they were the acts, omissions, defaults, negligence or obligations of Subcontractor.

17.5 ABB Contractor reserves the right to set off any indemnity/liability claims under the Subcontract against any amounts owed to Subcontractor.

17.6 For any indemnity obligations, Subcontractor shall defend ABB Contractor and/or Client at its cost against any third party claims upon ABB Contractor's request.

## 18. INSURANCE

18.1 Until issuance of the Final Acceptance Certificate and as required in the Special Terms and Conditions, Subcontractor shall maintain at its expense with reputable and financially sound insurers acceptable to ABB Contractor the following type of insurances: marine cargo insurance, public liability insurance, statutory worker's compensation/employer's liability insurance.

18.2 All insurance policies shall be endorsed to include ABB Contractor as additional insured and provide a waiver of insurer's right of subrogation in favour of ABB Contractor. All insurance policies and waivers of recourse shall, upon request by ABB Contractor, be extended to also similarly apply to Client. Subcontractor shall no later than Effective Date provide to ABB Contractor certificates of insurance covering such policies as well as confirmation that premiums have been paid. Subcontractor shall also provide upon ABB Contractor's request copies of such insurance policies.

18.3 In case of loss and damage related to the covers in Clause 18, any and all deductibles shall be for Subcontractor's account.

18.4 Subcontractor shall furnish notice to ABB Contractor within thirty (30) calendar days of any cancellation or non-renewal or material change to the terms of any insurance.

18.5 All Subcontractor policies (except worker's compensation/employer's liability) shall be considered primary insurance and any insurance carried by ABB Contractor shall not be called upon by Subcontractor's insurers to contribute or participate on the basis of contributing, concurrent, double insurance or otherwise.

18.6 Should Subcontractor fail to provide insurance certificates and maintain insurance according to Clause 18, ABB Contractor shall have the right to procure such insurance cover at the sole expense of Subcontractor.

18.7 Any compensation received by Subcontractor shall be applied towards the replacement and/or restoration of the Project Designed Goods.

18.8 Nothing contained in this Clause 18 shall relieve Subcontractor of any liability under the Subcontract or any of its obligations to make good any loss or damage to the Project Designed Goods. The insured amounts can neither be considered nor construed as a limitation of liability.

## 19. TERMINATION

19.1 Without prejudice to any other rights or remedies to which ABB Contractor may be entitled, ABB Contractor may terminate the Subcontract in the event that:

19.1.1 Subcontractor commits a breach of its obligations under the Subcontract, and fails to remedy that breach within ten (10) calendar days (unless otherwise stated under the Subcontract) of receiving written notice from ABB Contractor requiring its remedy; or

19.1.2 subject to Clause 7.3, the maximum amount of liquidated damages payable by Subcontractor is reached, or, subject to Clause 7.5, it is clear from the circumstances that a delay will occur in Delivery which would entitle ABB Contractor to maximum liquidated damages; or

19.1.3 Subcontractor fails to provide, in response to demand by ABB Contractor, adequate assurance of Subcontractor's future performance, whereby ABB Contractor shall be the sole judge of the adequacy of said assurance; or

19.1.4 Subcontractor ceases, or threatens to cease, performing a substantial portion of its business, whether voluntarily or involuntarily, that has or will have an adverse effect on Subcontractor's ability to perform its obligations under the Subcontract; or

19.1.5 any representation or warranty made by Subcontractor in the Subcontract is not true, or inaccurate and if such lack of truth or accuracy would reasonably be expected to result in an adverse impact on ABB Contractor, unless cured within ten (10) calendar days after the date of written notice of such lack; or

19.1.6 there is a change of control of Subcontractor.

19.2 Upon termination according to Clause 19.1, ABB Contractor shall be entitled to reclaim all sums which ABB Contractor has paid to Subcontractor under the Subcontract and to claim compensation for any costs, losses or damages incurred whatsoever in connection with such termination. Subcontractor shall at its own expense promptly remove from the Site all portions of the Project Designed Goods which are defective or otherwise not conforming with the Subcontract and which have not been corrected, unless removal is waived by ABB Contractor.

19.3 If Subcontractor does not proceed with the removal of defective or non-conforming Project Designed Goods or the respective parts immediately upon written notice from ABB Contractor, ABB Contractor may (or may instruct a third party to) remove them and store them at the expense of Subcontractor. If Subcontractor does not pay the cost of such removal and storage within ten (10) calendar days thereafter, ABB Contractor may upon ten (10) additional calendar days' written notice sell such items at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs of such sale and other costs that should have been borne by Subcontractor. If such proceeds of sale do not cover all costs of sale and other costs which Subcontractor should have borne, the difference shall be charged to Subcontractor. If payments then or thereafter due to Subcontractor are not sufficient to cover such amount, Subcontractor shall pay the difference to ABB Contractor.

19.4 Upon termination according to Clause 19.1, ABB Contractor may complete the Subcontract or employ other suppliers to complete the

Subcontract. Any such work shall be performed at Subcontractor's risk and expense. ABB Contractor shall have the right to take possession at Subcontractor's premises and/or at Site of any uncompleted part of the Project Designed Goods and use all Subcontractor Documentation, Subcontractor's equipment and other property provided (or to be provided) or used by Subcontractor and use it as ABB Contractor deems fit in order to complete the Project Designed Goods. If the cost to ABB Contractor for so completing the Project Designed Goods shall exceed the amount which would have been due to Subcontractor had the Project Designed Goods been completed by Subcontractor, Subcontractor shall pay the amount of such excess to ABB Contractor or it will be deducted from any money due or money that will become due to Subcontractor or from any of Subcontractor's guarantees.

19.5 ABB Contractor has the right to terminate the Subcontract or parts of the Subcontract without cause at any time with immediate effect at its sole discretion by written notice to Subcontractor. Upon receipt of such notice Subcontractor shall stop all progress of the Project Designed Goods and performance of the Subcontract unless otherwise directed by ABB Contractor. ABB Contractor shall pay Subcontractor for the Project Designed Goods completed and for the materials purchased for execution of the Project Designed Goods before termination and for which ABB Contractor is legally bound to accept Delivery, and which cannot be used by Subcontractor for any other purposes (such materials will become property of ABB Contractor upon payment by ABB Contractor), and other verified, proven and direct additional expenses for discontinuing the Subcontract. However, in no event shall the total amount to be paid by ABB Contractor to Subcontractor exceed the amount of accumulated costs as stated in the Special Terms and Conditions, or in the absence thereof, the amount due and payable by ABB Contractor at the time of termination according to the Subcontract. Subcontractor shall have no further claim for compensation due to such termination. Claims for compensation of loss of anticipated profits are excluded.

19.6 In case the Main Contract is terminated for reasons other than Subcontractor's performance and if ABB Contractor, as a result thereof, terminates the Subcontract, compensation to be paid to Subcontractor shall correspond to the compensation paid by Client to ABB Contractor for the respective part of the Subcontract.

19.7 On termination of the Subcontract, Subcontractor shall immediately deliver to ABB Contractor all copies of information or data provided by ABB Contractor to Subcontractor for the purposes of the Subcontract. Subcontractor shall certify to ABB Contractor that Subcontractor has not retained any copies of such information or data.

19.8 On termination of the Subcontract, Subcontractor shall immediately deliver to ABB Contractor all specifications, programs and other information, data, and Subcontractor Documentation regarding the Project Designed Goods which exist in any form whatsoever at the date of such termination, whether or not then complete.

19.9 Termination of the Subcontract, however arising, shall not affect or prejudice the accrued rights of the Parties as at termination, or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

## 20. COMPLIANCE, INTEGRITY

20.1 Subcontractor shall provide the Project Designed Goods in compliance with all relevant legislation, laws, rules, regulations, and codes of practice, guidance and other requirements of any relevant government or governmental agency. To the extent that such regulations are advisory rather than mandatory, the standard of compliance to be achieved by Subcontractor shall be in compliance with the generally accepted best practice of the relevant industry.

20.2 Subcontractor must comply with the ABB Lists of Prohibited and Restricted Substances and with the reporting and other requirements regarding Conflict Minerals made available under [www.abb.com](http://www.abb.com) – **Supplying – Material Compliance** or otherwise and shall provide ABB Contractor with respective documents, certificates and statements

if requested. Any statement made by Subcontractor to ABB Contractor (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 Project Designed Goods will be deemed to be a representation under the Subcontract.

20.3 Subcontractor represents and warrants that it is knowledgeable with, and is and will remain in full compliance with all applicable trade and customs laws, regulations, instructions, and policies, including, but not limited to, securing all necessary clearance requirements, proofs of origin, 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.

20.4 No material or equipment included in or used for the Project Designed Goods shall originate from any company or country listed in any relevant embargo issued by the authority in the country where the Project Designed Goods shall be used or an authority otherwise having influence over the equipment and material forming part of the Project Designed Goods. If any of the Project Designed Goods are or will be subject to export restrictions, it is Subcontractor's responsibility to promptly inform ABB Contractor in writing of the particulars of such restrictions.

20.5 Both Parties warrant that each will not, directly or indirectly, and that each 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 each Party, 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. Nothing in the Subcontract shall render either Party or any of its Affiliates liable to reimburse the other for any such consideration given or promised.

20.6 Subcontractor herewith acknowledges and confirms that Subcontractor 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 both ABB Codes of Conduct online under [www.abb.com/Integrity](http://www.abb.com/Integrity). Subcontractor is obliged and agrees to perform its contractual obligations in accordance with both ABB Codes of Conduct, including but without limitation to all employment, health, safety and environmental requirements specified therein and under [www.abb.es](http://www.abb.es) – ABB en España – Portal de Proveedores.

20.7 Any violation of an obligation contained in this Clause 20 shall be a material breach of the Subcontract. Either Party's material breach shall entitle the other Party to terminate the Subcontract with immediate effect and without prejudice to any further right or remedies under such Subcontract or applicable law.

20.8 Notwithstanding anything to the contrary contained in the Subcontract, Subcontractor shall, without any limitations, indemnify and hold harmless ABB Contractor from and against any liabilities, claim, proceeding, action, fine, loss, cost or damages arising out of or relating to any such violation of the above mentioned obligations and the termination of the Subcontract, or arising from export restrictions concealed by Subcontractor. With respect to export restrictions solely attributable to ABB Contractor's use of the Project Designed Goods, the now said commitment shall only apply to the extent Subcontractor has knowledge of or reasonably should have been aware of such use.

## 21. ASSIGNMENT AND SUBCONTRACTING

21.1 Subcontractor shall neither novate nor assign, subcontract, transfer, nor encumber the Subcontract nor any parts thereof (including any

monetary receivables from ABB Contractor) without prior written approval of ABB Contractor.

21.2 ABB Contractor may at any time assign, novate, encumber, subcontract or deal in any other manner with all or any of its rights or obligations under the Subcontract.

## 22. NOTICES AND COMMUNICATION

Any notice shall (unless otherwise agreed upon) be given in the language of the Subcontract by sending the same by registered mail, courier, fax or by e-mail to the address of the relevant Party as stated in the Subcontract or to such other address as such Party may have notified in writing to the other for such purposes. E-mail and fax notices 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.

## 23. WAIVERS

Failure to enforce or exercise, at any time or for any period, any term of the applicable ABB GTC/Project Designed Goods or the Subcontract 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.

## 24. GOVERNING LAW AND DISPUTE SETTLEMENT

24.1 The Subcontract shall be governed by and construed in accordance with the laws of the country (and/or the state, as applicable) of ABB Contractor's legal registration, however under exclusion of its conflict of law rules and the United Nations Convention on International Sale of Goods.

24.2 For domestic dispute resolution matters, whereby ABB Contractor and Subcontractor are registered in the same country, any dispute or difference arising out of or in connection with the Subcontract, including any question regarding its existence, validity or termination or the legal relationships established by the Subcontract, which cannot be settled amicably or by mediation, shall be submitted to the jurisdiction of the competent courts at the place of ABB Contractor's registration, unless other courts or arbitration are agreed in writing between the Parties.

24.3 For cross border dispute resolution matters, whereby ABB Contractor and Subcontractor 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 Subcontract, including any question regarding its existence, validity or termination or the legal relationships established by the Subcontract, which cannot be settled amicably or by mediation, 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 ABB Contractor 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.

24.4 Subcontractor shall keep such contemporary records as may be necessary to substantiate any claim. Without admitting ABB Contractor's liability, ABB Contractor may, after receiving any claim notice from Subcontractor, monitor the record-keeping and instruct Subcontractor to keep further contemporary records. ABB Contractor shall be entitled either itself or using such reputable and competent agents or representatives as it may authorize to audit the systems and retain records of Subcontractor specific to the Subcontract and Subcontractor shall ensure that ABB Contractor has similar rights to audit the systems and retain the records of any Subcontractor's sub-suppliers. No such audit or inspection shall relieve Subcontractor of liability or responsibility.

## 25. CONFIDENTIALITY, DATA SECURITY, DATA PROTECTION

25.1 Subcontractor shall:

25.1.1 Unless otherwise agreed in writing, keep in strict confidence all ABB Contractor Data and any other information concerning ABB Contractor's or its Affiliates' business, its products and/or its technologies which Subcontractor obtains in connection with the Project Designed Goods to be provided (whether before or after acceptance of the Subcontract). Subcontractor shall restrict disclosure of such confidential material to such of its employees, agents or subcontractors or other third parties as need to know the same for the purpose of the provision of the Project Designed Goods to ABB Contractor. Subcontractor shall ensure that such employees, agents, subcontractors or other third parties are subject to and comply with the same obligations of confidentiality as applicable to Subcontractor and shall be liable for any unauthorized disclosures;

25.1.2 Apply appropriate safeguards, adequate to the type of ABB Contractor Data to be protected, against the unauthorised access or disclosure of ABB Contractor Data and protect such ABB Contractor Data in accordance with the generally accepted standards of protection in the related industry, or in the same manner and to the same degree that it protects its own confidential and proprietary information – whichever standard is higher. Subcontractor may disclose confidential information to "Permitted Additional Recipients" (which means Subcontractor's authorised representatives, including auditors, counsels, consultants and advisors) provided always that such Permitted Additional Recipients sign with Subcontractor a confidentiality agreement with terms substantially similar hereto or, where applicable, are required to comply with codes of professional conduct ensuring confidentiality of such information;

25.1.3 Not (i) use ABB Contractor Data for any other purposes than for providing the Project Designed Goods, or (ii) reproduce the ABB Contractor Data in whole or in part in any form except as may be required by the respective contractual documents, or (iii) disclose ABB Contractor Data to any third party, except to Permitted Additional Recipients or with the prior written consent of ABB Contractor;

25.1.4 Install and update at its own costs required adequate virus protection software and operating system security patches for all computers and software utilized in connection with providing the Project Designed Goods;

25.1.5 Inform ABB Contractor without delay about suspicion of breaches of data security or other serious incidents or irregularities regarding any ABB Contractor Data.

25.2 Subcontractor agrees that ABB Contractor shall be allowed to provide any information received from Subcontractor to any Affiliate of ABB Contractor. Subcontractor shall obtain in advance all necessary approval or consent for ABB Contractor to provide such information to ABB Contractor's Affiliates if such information is confidential for any reason or subject to applicable data protection or privacy laws and regulations.

25.3 In case the type of ABB Contractor Data affected is particularly sensitive and therefore, according to ABB Contractor's opinion, requires a separate confidentiality and non-disclosure agreement, Subcontractor agrees to enter into such agreement. The same applies with regard to data privacy topics which are not covered by this Clause 25 and which may require a separate data processing agreement according to applicable laws and regulations.

25.4 The obligations under this Clause 25 exist for an indefinite period of time and therefore shall survive the expiration or termination of the Subcontract for any reason.

25.5 Pursuant to the terms of the Organic Personal Data Protection Act 15/1999 of December 13 (LOPD) and the corresponding regulations, ABB Contractor hereby serves notice that the personal data provided by Subcontractor 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 Subcontract, overseeing and administering purchases and administering procurement services. Subcontractor 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. ABB Contractor hereby also informs Subcontractor that it may exercise its rights of access, modification, cancellation, correction or opposition in accordance with LOPD by notifying ABB Contractor at the above specified address, to the attention of Group Function Legal and Integrity.

## **26. SEVERABILITY**

The invalidity or unenforceability of any term or of any right arising pursuant to the Subcontract shall not adversely affect the validity or enforceability of the remaining terms and rights. The respective terms or rights arising pursuant to the Subcontract 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.

## **27. SURVIVAL**

27.1 Provisions of the ABB GTC/Project Designed Goods which either are expressed to survive the termination of the Subcontract 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.

27.2 The obligations set forth in Clauses 11 (Warranty), 15 (Documentation), 17 (Liability and Indemnity) and 25 (Confidentiality, Data Security, Data Protection) shall survive expiration and termination of the Subcontract.

## **28. ENTIRETY**

The Subcontract constitutes the entire agreement and understanding between the Parties and replaces any prior agreement, understanding or arrangement between the Parties, whether oral or in writing.

## **29. RELATIONSHIP OF PARTIES**

The relationship of the Parties is that of independent parties dealing at arm's length and nothing in this Subcontract shall be construed to constitute any kind of an agency or partnership with ABB Contractor or Client, and Subcontractor is not authorised to represent ABB Contractor or Client.

## **30. 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 Subcontract.

