

## ABB GENERAL TERMS AND CONDITIONS

### FOR PURCHASE OF PROJECT DESIGNED GOODS (2018-1 SAUDI ARABIA)

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#### 1. DEFINITIONS AND INTERPRETATION

1.1 The following terms have the following meaning:

**ABB Contractor:** the party ordering the Project Designed Goods from Subcontractor;

**ABB Contractor Data:** any data or information, including Personal Data, 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;

**ABB GTC/Project Designed Goods:** these ABB General Terms and Conditions for Purchase of Project Designed Goods (2018-1 Saudi Arabia);

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

**Affiliate:** any entity which directly or indirectly controls, is controlled by, or is under common control with a Party;

**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 becomes effective 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 license agreement;

**Final Acceptance Certificate:** the document issued by ABB Contractor to Subcontractor in accordance with Clause 8.10;

**Intellectual Property Rights:** (a) patents, utility models, copyrights, database rights and rights in trademarks, trade names, designs, knowhow, and invention disclosures (whether registered or unregistered); (b) applications, reissues, confirmations, renewals, extensions, divisions or continuations for any of these rights; and (c) all other intellectual property rights and similar forms of worldwide protection;

**Main Contract:** the contract 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 in compliance with the applicable license terms and conditions;

**Order:** ABB Contractor's order issued to Subcontractor for the purchase of the Project Designed Goods;

**Party:** ABB Contractor or Subcontractor, collectively referred to as the Parties;

**Personal Data:** any data or information of an identified or identifiable natural person;

**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 document 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 agreement, comprising of:

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

and/or the Order, which is accepted by Subcontractor and ABB Contractor. Subcontractor shall be deemed to have accepted the Subcontract by performing the Subcontract in whole or in part;

**Subcontractor:** the party providing the Project Designed Goods to ABB Contractor;

**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 licenses, 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, or to amend, omit, add to, or otherwise change the Project Designed Goods or any parts thereof.

1.2 References to clauses are references to clauses of the ABB GTC/Project Designed Goods.

1.3 Headings are for convenience only and do not affect the interpretation of the ABB GTC/Project Designed Goods.

## 2. APPLICATION

2.1 The Subcontract, including the ABB GTC/Project Designed Goods, shall be the exclusive terms and conditions which shall govern the contractual relationship between ABB Contractor and Subcontractor.

2.2 No terms or conditions delivered with or contained in Subcontractor's quotations, acknowledgements, acceptances, specifications or similar documents shall form part of the Subcontract, and Subcontractor waives any right which it might have to rely on such terms or conditions.

2.3 Any amendments to the Subcontract shall be agreed in writing.

## 3. SUBCONTRACTOR'S RESPONSIBILITIES

3.1 Subcontractor shall provide 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 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 generally accepted best practice of the relevant industry. The Schedule and the Subcontract Price may be adjusted to take account of any increase or decrease in cost or delay resulting from a change in the Applicable Laws which materially affects 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 Subcontract and ABB Contractor instructions;

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 included in the Subcontract Price. Subcontractor shall prepare drawings, calculations, software programs, samples, patterns, models, operation and maintenance manuals, and other Subcontractor Documentation in sufficient detail to meet 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 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 performance of the Subcontract.

3.6 Subcontractor's failure to obtain information required shall not relieve Subcontractor neither from the responsibility of estimating properly the costs 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 is 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 affect the Project Designed Goods or its obligations under the Subcontract, and to have obtained all additional information and details which Subcontractor requires for the performance of the Subcontract. ABB Contractor shall not bear any costs or losses due to Subcontractor's failure to obtain such information.

3.8 Subcontractor shall give all notices and obtain and pay for all permits, visas, licenses and fulfil all other requirements necessary for the provision 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 Subcontractor shall access the Site only with 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. Subcontractor shall not carry out any work activity on Site without ABB Contractor first reviewing Risk Reduction and Method Statement specified in Clause 4.1.

3.11 Subcontractor shall pay and be responsible for the suitability and availability of access routes to the Site as well as for any special or temporary rights of way required for access to the Site and performance of the Subcontract. Subcontractor shall take precautions to keep all public or private roads or tracks clear of any spillage or droppings from its traffic. Subcontractor shall immediately clear all such spillage or droppings at its expense.

3.12 Subcontractor bears the risk of loss of or damages to the Project Designed Goods until Delivery and shall 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 to schedule and perform the Subcontract so as to avoid conflict or interference with work performed by other parties at Site.

3.14 If Subcontractor's performance of the Subcontract depends on 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 accepted by Subcontractor.

3.15 Subcontractor shall be responsible for any activities performed by its employees in relation to the Subcontract. In particular:

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

3.15.2 the Parties agree 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 performance of the Subcontract. ABB Contractor shall remain free of any 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 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 shall, without limitation, defend, indemnify and hold harmless ABB Contractor from any claim, proceeding, action, fine, loss, costs, damages and expenses arising out of or relating to any such claims and/or lawsuits, and any non-compliance with Applicable Laws. Subcontractor undertakes to appear in court at its own costs if requested by ABB Contractor, acknowledging its status as sole and exclusive employer, and to provide ABB Contractor with 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, liens or encumbrances. Such payments may be made through withholding Subcontractor's credits, 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 subcontractors, the following provisions shall apply:

3.16.1 Services means all services to be executed by Subcontractor or any of its subcontractors 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 at 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 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.

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 performance 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 performance 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 subcontractor to provide Services in the country of Site and to enter into a respective supply agreement with such subcontractor. If Subcontractor nominates a subcontractor 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 subcontractor. Subcontractor will also ensure that Subcontractor and its subcontractor jointly provide the supervision of the installation, commissioning and testing 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 with all HSE Requirements as specified in the Special Terms and Conditions.

4.2 Subcontractor's compliance with HSE Requirements requires the active participation of all levels of Subcontractor's management and supervision. Subcontractor shall appoint and keep assigned during the entire performance of the Subcontract certified HSE Manager and Site Manager, who are to be approved by ABB Contractor. Upon Effective Date, Subcontractor shall provide evidence to ABB Contractor of the HSE Manager's and Site Manager's professional HSE certification accredited by a reputable industry body. The HSE Manager and Site Manager shall have responsibility and authority for co-ordinating implementation of the Project HSE Plan. The HSE Manager and Site Manager shall have a direct line of communication to ABB Contractor's representative.

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 working on Site have received relevant training and introduction before being allowed to work on Site. Subcontractor shall have qualified HSE engineers, officers and advisors at senior level to support the line management throughout the entire performance of the Subcontract. Subcontractor shall immediately remove from Site any person who, in ABB Contractor's opinion, fails to comply with any HSE Requirements.

4.4 Regular HSE meetings shall be held between ABB Contractor and Subcontractor personnel as per a meeting schedule to be agreed upon, and upon reasonable ABB Contractor request. Subcontractor shall also hold regular HSE meetings involving line management and employees' representatives. The minutes of all the meetings shall be recorded and be available promptly for review by ABB Contractor upon written request. In addition to these regular meetings, ad-hoc meetings shall be organized by Subcontractor for specific design, construction or installation issues, to address risk identification and risk assessment related to the activity and/or related to the potential consequence on the Project.

4.5 Subcontractor shall perform daily monitoring of Site activities by Site supervisory personnel as an integral part of the Subcontract. Informal daily Site tours shall be conducted regularly during each shift to ensure all activities comply with the agreed method statement as referred to in the Special Terms and Conditions. Subcontractor shall actively participate in all ABB HSE forums, meetings, inspections and initiatives.

4.6 Subcontractor shall be solely responsible for the health and safety of all its employees at Site and shall immediately advise ABB Contractor and the relevant authority, if so required, of the occurrence of any 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 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, environment and property, and from any of its liabilities.

4.7 Subcontractor shall, if requested by ABB Contractor, perform medical examination of its employees prior to arrival on Site and provide ABB Contractor with the results of such examination, unless such provision would violate Applicable Laws. ABB Contractor reserves the right for medical reasons to deny Subcontractor's personnel access to Site.

4.8 Subcontractor shall store, transport, treat and remove to, at and from Site any substances or material that could cause damage or harm to the environment in the most environmental friendly way possible and in accordance with Applicable Laws and other regulations. Subcontractor shall also clear all its items constituting a fire hazard from Site. If Subcontractor fails to immediately comply with written instructions to clear materials, ABB Contractor shall clear such materials at Subcontractor's risk and expense.

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

4.10 Subcontractor shall communicate in time to ABB Contractor its audits and inspections plan, in order to allow ABB Contractor to participate in its audits and inspections if ABB Contractor wishes so. In addition, ABB Contractor shall have the right to carry out its own HSE audits at Site during all phases of the Subcontract to assess Subcontractor compliance with the HSE Requirements. Subcontractor shall provide all relevant resources, documentation and assistance as required by ABB Contractor to perform such audits.

4.11 ABB Contractor shall have the right to request Subcontractor to suspend the performance of the Subcontract or any part thereof, including postponing the provision of Subcontractor's work, for such times and in such manner as ABB Contractor considers necessary (i) for proper HSE in the execution of Subcontractor's work or (ii) due to any default by Subcontractor with HSE Requirements, in which case Subcontractor shall bear all costs and be liable for the delay arising from such suspension. Without prejudice to any other rights or remedies to which ABB Contractor may be entitled, ABB Contractor shall have the right to terminate the Subcontract in accordance with Clause 19.2.

4.12 Subcontractor shall ensure that its subcontractors are subject to and comply with the same obligations and HSE Requirements as applicable to Subcontractor.

## 5. VARIATION ORDERS

5.1 ABB Contractor may issue, using the form provided in the Annexes, Variation Orders to Subcontractor in order to alter the Schedule, or 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 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 entitle Subcontractor to an extension of time for performance of its obligations.

5.4 If Subcontractor believes that any order, request, act or omission of ABB Contractor 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 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 ensure 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, or time extension to Schedule.

## 6. DELIVERY

6.1 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 and cooperate with ABB Contractor in all respects of scheduling and planning.

6.3 Unless requested otherwise, Subcontractor shall at least weekly in the form requested by ABB Contractor, report the status of the Delivery. The report shall provide a statement regarding the timely Delivery 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 Delivery of any 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 all information regarding the Delivery. ABB Contractor reserves the right to withhold payments under the Subcontract if Subcontractor fails to submit any reports.

6.4 Subcontractor shall provide no later than 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.

6.5 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): Order number, date of Order, number of packages including dimensions, weights and contents and, in case of partial delivery, the outstanding balance remaining to be delivered.

6.6 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.

6.7 Ownership of Project Designed Goods shall pass on to ABB Contractor at whichever is the earliest of the following: (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.

6.8 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.

## **7. 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. Subcontractor shall take such measures as instructed by ABB Contractor for acceleration of progress so as to complete the Delivery of the Project Designed Goods, or the relevant part thereof, according to Schedule. Subcontractor shall not be entitled to any additional payment for taking such steps 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 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 according to Schedule, Subcontractor shall pay liquidated damages to ABB Contractor as for the rate specified in the Subcontract. Subcontractor shall pay the liquidated damages upon written demand or upon receipt of an invoice from ABB Contractor. ABB Contractor reserves the right to deduct the amount of liquidated damages from any payments due or which may become due to Subcontractor, or from Subcontractor's financial guarantees, without prejudice to any other recovery method. Payment of liquidated damages shall not relieve Subcontractor from any of its obligations or 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 (not less than one week).

7.4 If Subcontractor does not deliver within such final period, 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;

7.4.3 recover from Subcontractor any costs and expenses reasonably incurred by ABB Contractor in obtaining the Project Designed Goods in substitution from another subcontractor; and/or

7.4.4 claim, in addition to liquidated damages under Clause 7, damages for any costs, losses, expenses and liquidated damages incurred by ABB Contractor which are attributable to Subcontractor's delay.

7.5 ABB Contractor shall also have the right to terminate the Subcontract by notice in writing to Subcontractor if it is clear from the circumstances that a delay in Delivery will occur 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 may at its own discretion (i) inspect the Project Designed Goods and Subcontractor's manufacturing units upon providing reasonable notice, and/or (ii) witness factory tests of the Project Designed Goods, or any parts or materials thereof. 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 such inspection or test give ABB Contractor reason to believe that the Project Designed Goods do not comply or are unlikely to comply with the Subcontract, ABB Contractor will inform Subcontractor and Subcontractor shall immediately take any action necessary to ensure compliance with the Subcontract. In addition Subcontractor shall carry out such necessary additional inspection or testing at Subcontractor's costs, and bear ABB Contractor's and Client's costs of attending such additional inspection and testing of the Project Designed Goods.

8.4 Subcontractor shall prepare and transfer to ABB Contractor within fifteen (15) calendar days from the Effective Date 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 in writing ABB Contractor at least four (4) weeks in advance when the Project Designed Goods are ready for the agreed inspections and tests.

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

8.7 If 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, however at the latest 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 is 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 deficiencies and defects shall be 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 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 be deemed 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. In no event shall the warranty period commence under such conditional Acceptance Test Certificate. After all defects and deficiencies have been remedied, the Acceptance Test Certificate shall become effective.

8.10 ABB Contractor will 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 is 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 deficiencies and defects shall be 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 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 be deemed 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 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 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 performance 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 and at its own discretion. Such possession shall not constitute acceptance of the Project Designed Goods and shall not relieve Subcontractor of any obligations or liabilities under the Subcontract.

8.15 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 not exempt Subcontractor from or limit Subcontractor's warranties or liability in any way.

## 9. SUSPENSION OF THE SUBCONTRACT

9.1 ABB Contractor may at its own discretion suspend performance of the Subcontract at any time for convenience for a period of ninety (90) calendar days in the aggregate without any compensation to Subcontractor. In case the suspension extends beyond ninety (90) calendar days, Subcontractor shall be compensated by ABB Contractor for direct and reasonable costs incurred by such suspension, such as costs of protection, storage and insurance. The agreed time for performance of the Subcontract or the concerned part thereof shall be extended by the time 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 performance, or (ii) due to any default by Subcontractor. Subcontractor shall bear all costs and be liable for the delay arising from such suspension.

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

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

9.6 Subcontractor shall not suspend performance of the Subcontract.

## 10. FORCE MAJEURE

10.1 Neither Party shall be liable for any delay or 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 such Force Majeure event.

10.2 Force Majeure means the occurrence of any of the following events, provided that they are unforeseeable and beyond the control of the affected Party: flood, earthquake, volcanic eruption, war (whether declared or not), or terrorism.

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

10.4 If a Force Majeure event exceeds twelve (12) months, either Party may terminate the Subcontract forthwith by written notice to the other Party without liability.

## 11. WARRANTY AND REMEDIES

11.1 Subcontractor warrants that:

11.1.1 the Project Designed Goods comply with the Subcontract, including but not limited to the specifications stipulated therein and Subcontractor's responsibilities as defined in Clauses 3 and 4;

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 retain the functionality and performance as expected by Client; and

11.1.5 the Project Designed Goods remain free from defects in design, workmanship and material during the warranty period.

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 license 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 is 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 case 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.

11.5 Subcontractor shall, during a period of three (3) years after expiry of the warranty period, remain responsible for and 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). Notwithstanding the foregoing, if the applicable law foresees a longer warranty period for any hidden/latent defects, such longer warranty period shall apply.

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

11.7 In case of non-compliance with the warranty provided under this Clause 11, or in case of any other breach of the Subcontract, ABB Contractor may at its own discretion enforce any or more of the following remedies at Subcontractor's expense:

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

11.7.2 to obtain prompt repair or replacement of the non-compliant Project Designed Goods by other Project Designed Goods conforming with the Subcontract. 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;

11.7.3 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;

11.7.4 to refuse 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 shall 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;

11.7.6 to terminate the Subcontract in accordance with Clause 19.1.

11.8 The rights and remedies available to ABB Contractor under 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 fails to deliver the Project Designed Goods in accordance with the Subcontract, including but without limitation to the Schedule, and if Subcontractor fails to take satisfactory actions (acceptable to ABB Contractor) to commence correction within seven (7) calendar days after receipt of written notice from ABB Contractor, ABB Contractor may, at its own discretion and in addition to any other remedy or rights it may have, take the Project Designed Goods (or relevant part thereof) 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 ABB Contractor's costs for so completing the Project Designed Goods exceed the amount which would have been due to Subcontractor if the Project Designed Goods had been completed by it, Subcontractor shall pay the amount in excess of the Subcontract Price to ABB Contractor, who otherwise may deduct such amount from any

money that is or will become due to Subcontractor or from any of Subcontractor's financial guarantees.

## 13. SUBCONTRACT PRICE, PAYMENT, INVOICING

13.1 The Subcontract Price is deemed to cover all obligations of Subcontractor under the Subcontract and includes the costs of the Project Designed Goods specified and all other costs necessary for providing the Project Designed Goods, including but not limited to fees, taxes, duties, transportation, profit, overhead, licenses, permits, and travel, whether indicated or described or not.

13.2 The prices stipulated in the Subcontract are firm unless amended in a Variation Order.

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

13.4 Subcontractor shall submit invoices in an auditable form, complying with applicable laws, generally accepted accounting principles and ABB Contractor requirements, containing the following minimum information: Subcontractor name, address and reference person including contact details; invoice date; invoice number; Order number and Subcontractor number; address of ABB Contractor; quantity; specification of Project Designed Goods; 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 issued to ABB Contractor and be accompanied by interim release of liens or encumbrances. The submission of an invoice is 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 connection with the performance of the Subcontract in order to avoid the imposition of any liens or encumbrances against any portion of the Project Designed Goods and/or the Project. In case of the imposition of such liens or encumbrances by any person who has supplied directly or indirectly such equipment or labour in relation to the Subcontract, Subcontractor shall, at its own expense, promptly take all action necessary to cause such liens or encumbrances to be released or discharged. Upon ABB Contractor's request Subcontractor shall furnish satisfactory evidence to verify compliance with the above. In the alternative, ABB Contractor may at its own discretion pay to release the lien and withhold such amounts from Subcontractor.

13.7 ABB Contractor reserves the right to withhold the whole or part of any payment to Subcontractor which, in the opinion of ABB Contractor, 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 subcontractors or employees, or not having paid taxes, dues or 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 has no right to set off any amounts owed by ABB Contractor to Subcontractor, unless approved by ABB Contractor in writing.

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

vide such guarantees shall entitle ABB Contractor to claim compensation for costs and damages as may have been sustained by ABB Contractor as a result of such failure, without prejudice to any other rights ABB Contractor may have under the Subcontract. ABB Contractor may at its own discretion 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. However, in case an advance payment guarantee is submitted, such guarantee shall remain valid until issuance of the Acceptance Test Certificate.

14.3 If the Parties agree on increased prices, the financial guarantees shall be increased proportionally within twenty (20) calendar days from ABB Contractor's written confirmation of the increased 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 are to 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 delivering the Project Designed Goods;

15.1.2 prepare translations 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 promptly notify ABB Contractor of any errors, omissions or discrepancies. ABB Contractor shall not bear any costs or liability in relation to any errors, omissions or discrepancies which Subcontractor ought to have found;

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

15.2 Where certificates are required, Subcontractor shall submit such certificates at its expense and in accordance with ABB Contractor's instructions. Certificates are subject to approval by ABB Contractor, and Subcontractor shall not fabricate or deliver Project Designed Goods represented by such certificates without such approval. Certificates shall identify the certified Project Designed Goods and include but not be limited to the following information: Subcontractor's name, name of the item, manufacturer's name, reference to the appropriate drawing, technical specification section and paragraph number.

15.3 All Subcontractor Documentation is subject to approval by ABB Contractor. Subcontractor is not entitled to any compensation for Project Designed Goods provided prior to such approval to the extent that Project Designed Goods have to be modified as a result of ABB Contractor's comments.

15.4 ABB Contractor shall comment on Subcontractor Documentation within the time period specified in the Subcontract, provided that the Subcontractor Documentation is in a status that enables ABB Contractor to decide if the Subcontractor Documentation is to be approved or revised.

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

15.6 Approvals by ABB Contractor do not constitute 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 the Subcontract. Final acceptance of the Project Designed Goods is exclusively subject to issuance of the Final Acceptance Certificate.

15.7 Any drawings and documents provided by ABB Contractor remain the exclusive property of ABB Contractor and shall not be used by Subcontractor for any other purpose than performing the Subcontract. Such drawings and documents shall 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 shall be returned upon ABB Contractor's request.

15.8 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 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, sublicensable, non-exclusive, royalty-free license to use the Intellectual Property Rights in the Project Designed Goods, including Subcontractor Documentation and including Embedded Software, if any.

16.2 If any Intellectual 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 If Embedded Software contains or uses Open Source Software, Subcontractor must inform ABB Contractor in writing and prior to Delivery about all Open Source Software contained in or used by the Embedded Software. If ABB Contractor does not approve Open Source Software components contained in or used by the Embedded Software, Subcontractor agrees to replace the affected Open Source Software component(s).

## 17. LIABILITY AND INDEMNITY

17.1 Subcontractor shall indemnify ABB Contractor and Client against all liabilities, losses, damages, injuries, costs, 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 subcontractors.

17.2 Without prejudice to applicable mandatory law, Subcontractor shall, without limitation, indemnify and hold harmless ABB Contractor and Client from all liabilities, damages, costs, losses or expenses incurred as a result of Subcontractor's breach of the Subcontract. Subcontractor shall, without limitation, indemnify and hold harmless ABB Contractor from any claim made by a third party against ABB Contractor in connection with the Project Designed Goods, including but without limitation to claims that such Project Designed Goods infringe a third party's Intellectual Property Rights. Upon ABB Contractor's request, Subcontractor shall assume and pay for the defence of ABB Contractor against any third party claims.

17.3 In the event of infringements of third party Intellectual Property Rights caused by or related to the Project Designed Goods, without prejudice to ABB Contractor's rights under the Subcontract, Subcontractor shall, upon notification from ABB Contractor at ABB Contractor's discretion, but at Subcontractor's costs (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 assumes full responsibility for the acts or omissions of its employees and/or subcontractors as if such acts or omissions were those of Subcontractor.

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

## 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 the Effective Date provide to ABB Contractor certificates of insurance 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 or damage related to the covers in Clause 18, all deductibles shall be to 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) are 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 may procure such insurance cover at Subcontractor's expense.

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

18.8 Nothing in this Clause 18 shall relieve Subcontractor from any liability towards ABB Contractor. The insured amounts cannot be considered as limitation of liability.

## **19. TERMINATION**

19.1 ABB Contractor may at its own discretion terminate the Subcontract for convenience in whole or in part at any time with immediate effect by written notice to Subcontractor. Upon receipt of such notice, Subcontractor shall stop performance of the Subcontract. ABB Contractor shall pay Subcontractor for the Project Designed Goods delivered and for the materials purchased for manufacturing of the Project Designed Goods before termination which cannot be used by Subcontractor for other purposes (such Project Designed Goods and materials shall become property of ABB Contractor upon payment), and other verified, proven and direct expenses incurred for discontinuing the Subcontract. However, in no event shall the total amount to be paid by ABB Contractor exceed the amount of accumulated costs as stated in the Special Terms and Conditions, or in the absence thereof the amount due by ABB Contractor at the time of termination according to the Subcontract. Subcontractor shall have no further claim for compensation due to such termination. Subcontractor waives any claim for compensation of loss of anticipated profits.

19.2 ABB Contractor may at its own discretion terminate the Subcontract with immediate effect if:

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

19.2.2 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

19.2.3 Subcontractor fails to provide, if requested 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

19.2.4 there is any adverse change in the position, financial or otherwise, of Subcontractor, whereby and without limitation:

a) Subcontractor becomes insolvent; or

b) an order is made for the winding up of Subcontractor; or

c) documents are filed with a court of competent jurisdiction for the appointment of an administrator of Subcontractor; or

d) Subcontractor makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

19.2.5 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

19.2.6 any representation or warranty made by Subcontractor in the Subcontract is not true or inaccurate, and if such lack of truth or accuracy can 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

19.2.7 there is a change of control of Subcontractor.

19.3 Upon termination according to Clause 19.2, 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 Site all portions of the Project Designed Goods which are defective or otherwise not conforming to the Subcontract and which have not been corrected, unless removal is waived by ABB Contractor.

19.4 If Subcontractor does not remove the defective or non-conforming Project Designed Goods immediately upon written notice from ABB Contractor, ABB Contractor, at its own discretion, may (or may instruct a third party to) remove and store them at the expense of Subcontractor. If Subcontractor does not pay the costs of such removal and storage within ten (10) calendar days thereafter, ABB Contractor may upon ten (10) additional calendar days' written notice at its own discretion sell such items at auction or at private sale and account for the net proceeds thereof, after deducting all costs of such sale and other costs that should have been borne by Subcontractor. If such sales 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.

19.5 Upon termination according to Clause 19.2, ABB Contractor, at its own discretion, may (or may employ other suppliers to) complete the Subcontract. Any such work shall be performed at Subcontractor's risk and expense. ABB Contractor may at its own discretion 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 ABB Contractor's costs for so completing the Project Designed Goods 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 shall be deducted from any money due or money that will become due to Subcontractor or from any of Subcontractor's financial guarantees.

19.6 Upon termination according to Clause 19.2, ABB Contractor may enter into, and Subcontractor shall undertake to assign, any agreements with Subcontractor's subcontractors. Any costs related to such assignments shall be to the account of Subcontractor.

19.7 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.

19.8 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.

19.9 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.

19.10 Termination of the Subcontract, however arising, shall not affect or prejudice the accrued rights of the Parties as at termination.

## 20. COMPLIANCE, INTEGRITY

20.1 Subcontractor shall provide the Project Designed Goods in compliance with all relevant laws, regulations, and codes of practice.

20.2 Subcontractor and its subcontractors 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 documents, certificates and statements as requested. Any statement made by Subcontractor to ABB Contractor (whether directly or indirectly) with regard to materials used for or in connection with the Project Designed Goods shall be deemed to be a representation under the Subcontract.

20.3 Subcontractor represents and warrants that it is and will remain fully compliant with all applicable trade and customs laws, regulations, instructions, and policies, including, but not limited to, satisfying 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.

20.4 No material or equipment included in or used for the Project Designed Goods must 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 shall be 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 other persons will, directly or indirectly, make any payment, gift or other commitment to its customers, to government officials or to agents, directors and employees of 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, the UK Bribery Act 2010 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 agrees to perform its contractual obligations in accordance with both ABB Codes of Conduct.

20.7 ABB has established reporting channels where Subcontractor and its employees may report suspected violations of applicable laws, policies or standards of conduct: Web portal: [www.abb.com/Integrity – Reporting Channels](http://www.abb.com/Integrity-Reporting-Channels); contact details specified on this Web portal.

20.8 Any violation of an obligation contained in this Clause 20 is a material breach of the Subcontract and entitles the other Party to terminate the Subcontract with immediate effect and without prejudice to any further rights or remedies available thereunder or at law. Notwithstanding anything to the contrary in the Subcontract, Subcontractor shall, without limitation, indemnify and hold harmless ABB Contractor from all liabilities, damages, costs or expenses incurred as a result of any such violation and/or termination of the Subcontract, or arising from export restrictions concealed by Subcontractor.

## 21. ASSIGNMENT AND SUBCONTRACTING

21.1 Subcontractor shall neither assign nor transfer, encumber nor subcontract 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 its own discretion assign, transfer, encumber, subcontract or deal in any other manner with the Subcontract or parts thereof to its Affiliates.

## 22. NOTICES AND COMMUNICATION

Any notice shall be given in the language of the Subcontract 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. E-mail and fax require written confirmation of the receiving Party.

## 23. WAIVERS

Failure to enforce or exercise any term of the Subcontract does not constitute a waiver of such term and does not affect the right later to enforce such or any other term therein contained.

## 24. GOVERNING LAW AND DISPUTE SETTLEMENT

24.1 The Subcontract is governed by the laws of the country (and/or the state, as applicable) where ABB Contractor is registered, however under exclusion of its conflict of law rules and the United Nations Convention on International Sale of Goods.

24.2 If ABB Contractor and Subcontractor are registered in the same country, any dispute arising in connection with the Subcontract which cannot be settled amicably or by mediation shall be submitted for resolution to the jurisdiction of the Board of Grievances (Commercial Divisions) sitting in Riyadh and established pursuant to Royal Decree No. M/51 dated 17/7/1402 H. (10 May 1982).

24.3 If ABB Contractor and Subcontractor are registered in different countries, any dispute arising in connection with 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 therewith. Place of arbitration shall be ABB Contractor's place of registration. The language of the proceedings and of the award shall be English. The decision of the arbitrators is final and binding upon both Parties, and neither Party may appeal for revision.

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 at its own discretion, after receiving any claim notice from Subcontractor, monitor the record-keeping and instruct Subcontractor to keep further contemporary records. ABB Contractor is entitled either itself or using such reputable and competent agents or representatives as it may authorize at its own discretion 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 subcontractors. No such audit or inspection shall relieve Subcontractor of liability or responsibility.

## **25. CONFIDENTIALITY, DATA SECURITY, DATA PROTECTION**

25.1 Subcontractor shall keep in strict confidence all ABB Contractor Data and any other information concerning ABB Contractor's or its Affiliates' business, their products and/or their 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.

25.2 Subcontractor shall 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 (i) such information is disclosed on a strict need-to-know basis, and (ii) 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. Subcontractor shall comply with, and ensure that the Permitted Additional Recipients comply with, any security procedure, policy or standard provided to Subcontractor by ABB Contractor or any of its Affiliates from time to time, and in particular with the ABB Cyber Security Requirements for Suppliers as made available under [www.abb.com/Supplying/Cybersecurity](http://www.abb.com/Supplying/Cybersecurity), or as otherwise set out in the Subcontract.

25.3 Subcontractor shall 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.

25.4 Subcontractor shall 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.

25.5 Subcontractor shall inform ABB Contractor without delay about suspicion of breaches of data security or other serious incidents or irregularities regarding any ABB Contractor Data.

25.6 Subcontractor agrees that ABB Contractor may provide any information received from Subcontractor to Affiliates of ABB Contractor and to third parties.

### **25.7 Protection of Personal Data**

25.7.1 If ABB Contractor discloses Personal Data to Subcontractor, Subcontractor shall comply with all applicable data protection laws and regulations.

25.7.2 Subcontractor shall apply appropriate physical, technical and organizational measures to ensure a level of security of Personal Data appropriate to the respective risk and the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services.

25.7.3 Subcontractor agrees that it will not withhold or delay its consent to any changes to this Clause 25 which in ABB Contractor's or its Affiliates' reasonable opinion are required to be made in order to

comply with applicable data protection laws and regulations and/or with guidelines and advice from any competent supervisory authority, and agrees to implement any such changes at no additional cost to ABB Contractor.

25.7.4 Subcontractor acknowledges that the processing of Personal Data in accordance with the Subcontract may require the conclusion of additional data processing or data protection agreements with ABB Contractor or its Affiliates. To the extent such additional agreements are not initially concluded as part of the Subcontract, Subcontractor, its relevant Affiliates or subcontractors shall upon ABB Contractor's request promptly enter into any such agreement(s), as designated by ABB Contractor and as required by mandatory law or a competent data protection or other competent authority.

## **26. SEVERABILITY**

The invalidity or unenforceability of any term of the Subcontract shall not adversely affect the validity or enforceability of the remaining terms. The Subcontract shall be given effect as if the invalid or unenforceable term had been replaced by a term with a similar economic effect.

## **27. SURVIVAL**

27.1 Provisions of the Subcontract 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.

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

## **28. ENTIRETY**

The Subcontract constitutes the entire agreement between the Parties and replaces any prior agreement between the Parties, whether oral or in writing, with regard to its subject.

## **29. RELATIONSHIP OF PARTIES**

The relationship of the Parties is that of independent parties dealing at arm's length and nothing in the Subcontract may be construed to constitute Subcontractor as an agent or employee of ABB Contractor or so as to have any kind of partnership with ABB Contractor or Client, and Subcontractor shall not represent itself as or act on behalf of ABB Contractor or Client.