

# **ABB GENERAL TERMS AND CONDITIONS**

## **FOR INTERNATIONAL PURCHASE OF SERVICES**

### **(ABB GTC/SERV 2012-1)**

**DATE:** Jan. 01, 2012

**FOR:** ABB Affiliates' purchases of services, excluding services related to R&D work, product development, software, information systems and networks and legal support.

#### **1. DEFINITIONS AND INTERPRETATION**

1.1 In this document

**"ABB GTC/Serv":** means the present ABB General Terms and Conditions for Purchase of Services (2012-1);

**"Affiliate":** means any entity, whether incorporated or not, which presently or in the future, directly or indirectly owns, is owned by, or is under common ownership with, by virtue of a controlling interest of 50 % or more of the voting rights or the capital, a Party to the agreement on which the ABB GTC/Serv is applicable;

**"Customer":** means the buying entity ordering Services from Supplier;

**"Intellectual Property (Rights)":** means all intellectual property rights including but not limited to know-how, inventions, data, discoveries, and industrial designs, whether patentable or not, and all copyrightable materials including, but not limited to documentation, reports and tapes relating to Services and/or Work Products;

**"Order":** consists of Customer's Order form and such plans, specifications, drawings and annexures referred to in or attached to the Order, and this ABB GTC/Serv;

**"Party":** means either Customer or Supplier;

**"Services":** means the services (including Work Products) to be supplied, and the obligations to be performed, by Supplier under this ABB GTC/Serv and the related Order and other documents specifying the services to be provided;

**"Supplier":** means provider of the purchased Services such as the person, firm or company who accepts Customer's Order;

**"Work Product":** means all materials and products resulting from or in relation to the Services to be provided or developed under this ABB GTC/Serv, or otherwise provided by Supplier or its subcontractors under this ABB GTC/Serv in any form or media, including without limitation to data, diagrams, reports, specifications (including drafts).

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

1.2.1 References to clauses and sub-clauses are to clauses and sub-clauses of the ABB GTC/Serv;

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

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

1.2.4 The use of any gender includes all genders.

#### **2. APPLICATION OF TERMS**

2.1 Each Order requires acceptance by Supplier either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part.

2.2 The ABB GTC/Serv are the only terms and conditions upon which Customer is prepared to deal with Supplier for the provision of Services, and it shall govern the contractual relationship between

Customer and Supplier to the exclusion of all other terms or conditions, except if and to the extent otherwise expressly agreed in writing between Customer and Supplier.

2.3 No terms or conditions endorsed upon, delivered with or contained in Supplier's quotations, acknowledgements or acceptances of orders, specifications or similar documents will form part of the contractual relationship, and Supplier waives any right which it otherwise might have to rely on such other terms and conditions.

2.4 The ABB GTC/Serv version effective at the date when the Order was placed, applies to the respective Order, and any variation to the ABB GTC/Serv shall have no effect unless expressly agreed in writing and signed by duly authorised representatives of Customer and Supplier.

#### **3. SUPPLIER'S RESPONSIBILITIES**

3.1 Supplier warrants to Customer that it shall perform the Services:

3.1.1 in accordance with the applicable laws and regulations; and

3.1.2 with all appropriate skill and care and in accordance with industry best practice; and

3.1.3 in such a way as to conform in all respects with the Order and related specifications.

3.2 Otherwise Supplier shall promptly and at its own cost, carry out all remedial work necessary to enable Customer to accept the Services or necessary to remedy in accordance with Clause 10 (Remedies) any deficiencies which occurred or were discovered within six (6) months after final acceptance of the Services by Customer, unless otherwise agreed between the Parties in writing.

3.3 Supplier shall submit invoices in an auditable form, complying with applicable local mandatory law and generally accepted accounting principles and containing the following minimum information: Supplier name, address and reference person including contact details (telephone, e-mail etc); invoice date; invoice number; ABB's Order No. as stated in the Order; ABB's Supplier number as stated in the Order; address of Customer; quantity; specification of Services supplied; price (total amount invoiced); currency; tax or VAT amount; tax or VAT No.; payment terms.

3.4 Invoices shall be issued to Customer in accordance with the Order and sent to the invoice address specified in the Order.

3.5 Supplier's invoices shall specify the cost(s) of accommodation, living costs, travelling and any other ancillary expenses reasonably and properly incurred by employees of Supplier in connection with the provision of the Services unless otherwise provided by law. Unless otherwise agreed in writing between the Parties, the cost of expenses, materials, and third party services shall be passed through by Supplier to Customer without profit mark-up (at cost). Supplier shall obtain Customer's written approval before incurring any such expense, material and VAT which Supplier shall add to its invoices at the applicable local rate.

3.6 Customer may issue variation Orders to Supplier to alter, amend, omit, add to, or otherwise change Services of Supplier or parts

thereof, and Supplier shall carry out such variation Orders under the Order and/or ABB GTC/Serv. In such event Supplier shall only be entitled to additional compensation and extension of time for additional work or services forming part of a variation Order. Agreed unit prices stated in the Order and/or ABB GTC/Serv or any other document agreed between Customer and Supplier shall apply.

3.7 In no event Supplier shall suspend performing Services to Customer.

3.8 Supplier shall allow Customer to inspect and to test the Services or parts of them at any time prior to the completion of the Services.

#### **4. CUSTOMER'S RESPONSIBILITIES**

4.1 In consideration of the properly performed Services provided by Supplier, Customer shall pay to Supplier the purchase price provided the invoice fulfils the requirements in sub-clauses 3.3 and 3.7 and the payment conditions stated in the Order, unless otherwise agreed in writing by the duly authorised representatives of both Parties, and always in accordance with applicable mandatory law.

4.2 Customer reserves the right to set off such amount owed to Supplier or withhold payment for Services not properly performed.

#### **5. INTELLECTUAL PROPERTY**

In the event that the Services provided under the ABB GTC/Serv result in a Work Product, the following terms and conditions shall apply:

5.1 Supplier assigns herewith to Customer full ownership rights in and to any Intellectual Property in the Work Products arising from the Services for the full duration of such rights, wherever in the world enforceable. Supplier further agrees to execute, upon Customer's request and at its cost, all further documents and assignments and do all such further things as may be necessary to perfect Customer's ownership title to the Intellectual Property or to register Customer as owner of the Intellectual Property with any registry, including but not limited to governmental registration authorities or private registration organisations. In the event the Parties have expressly agreed in a separate written agreement that the Intellectual Property Rights shall not be assigned to Customer (as stated above), Supplier automatically grants herewith Customer and its Affiliates a royalty free, worldwide, irrevocable, non-exclusive, perpetual licence to use the Work Products, including but not limited to a right to further improve, develop, market, distribute, sub-license, exploit or otherwise use the Work Products in any way.

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

5.3 Any other use (outside of sub-clauses 5.1 and 5.2) of Intellectual Property Rights requires a separate written licence agreement between Customer and Supplier.

5.4 Without prejudice to the assignments in sub-clauses 5.1 and 5.2, Supplier agrees that, if called upon to do so by Customer, it will at the expense of Customer co-operate with Customer in making patent, copyright, or other applications for registration of Intellectual Property Rights in respect of the Work Product.

5.5 Supplier agrees that the assignment of rights under this Clause 5 shall in no way impose upon Customer an obligation to protect, enforce, exploit or make use of any such rights.

5.6 To the full extent permissible by applicable laws, Supplier shall procure waivers of moral rights arising as a result of the Work Products from any party it shall engage in the creation of Work Products.

5.7 For the avoidance of doubt, Customer shall have the right to sublicense, assign, and otherwise transfer its rights under sub-clauses 5.1 and 5.2.

5.8 Supplier shall refrain from any action prejudicial to the subsistence of Intellectual Property Rights created or arising from the Work Products and from action prejudicial to the assignments in sub-clauses 5.1 and 5.2.

5.9 Subject always to sub-clauses 5.1 and 5.2 and the express prior written consent of Customer, Supplier shall have the right to use the Intellectual Property created or arising from the Services as Work Products for the purposes of its own business, provided that Supplier shall keep the Intellectual Property strictly confidential unless it obtains the prior written consent of Customer to any other use or disclosure.

#### **6. INTELLECTUAL PROPERTY RIGHT INFRINGEMENTS**

6.1 In the event a Work Product provided by Supplier infringes any third party intellectual property rights, Supplier shall, notwithstanding anything contained in an agreement on Work Product or any other document related to such agreement, defend, indemnify and keep indemnified Customer from and against costs, claims, demands, liabilities, expenses, damages or losses (including without limitation to any direct or indirect consequential losses, loss of profit and loss of reputation, and late payment charges, penalties and legal and other professional costs and expenses) arising out of such third party intellectual property right infringements. The indemnity shall apply whether or not Supplier may have been negligent or at fault and does not limit any further compensation rights of Customer. Supplier's obligation to indemnify Customer as provided under this Clause 6 shall not apply if and to the extent the liability or damage was caused by Customer's pre-existing Intellectual Property Rights, contributed to, or implemented into the Work Product.

6.2 If any infringement claim is made against Customer, Customer may request at Supplier's cost: (i) to procure for Customer the right to continue using, developing, modifying or maintaining the Work Product; (ii) to modify the Work Product so that it ceases to be infringing; (iii) to replace the Work Product so that it becomes non-infringing; or (iv) to repay all sums which Customer has paid to Supplier under the respective Order.

#### **7. COMPLIANCE WITH RELEVANT LAW**

7.1 The Services covered by this ABB GTC/Serv shall be provided by Supplier in compliance with all relevant legislation, regulations, and codes of practice, guidance and other requirements of any relevant government or governmental agency applicable to Supplier. To the extent that such regulations are advisory rather than mandatory, the standard of compliance to be achieved by Supplier shall be in compliance with the generally accepted best practice of the relevant industry.

7.2 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 this ABB GTC/Serv shall render either Party or any of its Affiliates liable to reimburse the other for any such consideration given or promised.

7.3 Either Party's material violation of any of the obligations contained in this Clause 7 may be considered by the other Party to be a material breach of the respective contractual relationship for the provision of Services to which this ABB GTC/Serv applies, and shall entitle such Party to terminate such contractual relationship for provision of Services with immediate effect and without prejudice to any further right or remedies under this contractual relationship for provision of Services or applicable law.

7.4 Supplier shall indemnify without any agreed limitations Customer for all liabilities, damages, costs, or expenses incurred as a result of any such violation of the above mentioned obligations and termination of the respective contractual relationship for provision of Services.

7.5 Upon signing an Order to which this ABB GTC/Serv applies, Supplier herewith acknowledges and confirms that it has received a copy of ABB's Code of Conduct and ABB's Supplier Code of Conduct or has been provided information on how to access the ABB Codes of Conduct online (Web portal: [www.abb.com](http://www.abb.com)). Supplier agrees to perform its contractual obligations under the ABB GTC/Serv and the respective contractual relationship with substantially similar standards of ethical behaviour as stated in the ABB Codes of Conduct.

## 8. CONFIDENTIALITY & DATA PROTECTION

8.1 Supplier shall:

8.1.1 Keep in strict confidence all technical or commercial information, specifications, inventions, processes or initiatives of Customer which have been disclosed to Supplier by Customer or its agents and any other information concerning Customer's business or its products which Supplier obtains in connection with the Services (whether before or after acceptance of the Order). Supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of the provision of the Services to Customer. Supplier shall ensure that such employees, agents or sub-contractors are subject to the same obligations of confidentiality as applicable to Supplier;

8.1.2 Apply reasonable safeguards against the unauthorised disclosure of Customer's confidential and proprietary information and protect confidential information 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 the higher. Supplier may disclose confidential information to "Permitted Additional Recipients" (which means Supplier's authorised representatives, including auditors, counsels, consultants and advisors) provided always that such Permitted Additional Recipients sign with Supplier a confidentiality agreement with terminology substantially similar hereto or where applicable, are required to comply with codes of professional conduct ensuring confidentiality of such information;

8.1.3 Take all necessary steps to ensure that Customer's data or information which come into its possession or control in the course of providing the Services is protected. In particular Supplier shall not (i) use Customer's data or information for any other purposes than for providing the Services, or (ii) reproduce the data or information in whole or in part in any form except as may be required by the respective contractual documents, or (iii) disclose Customer's data or information to any third party not authorised by Customer to receive it, except with the prior written consent of Customer;

8.1.4 Install and update at its own costs required adequate virus protection software and operating system security patches for all

computers utilized in connection with providing the Services and shall provide updates to Customer if so requested by Customer.

8.2 Nothing contained in this ABB GTC/Serv shall prevent an ABB Affiliate to provide any confidential information to another ABB Affiliate unless prohibited by applicable law.

## 9. LIABILITY AND INDEMNITY

9.1 Without prejudice to applicable mandatory law Supplier shall compensate Customer for all damages and losses in connection with the Services whether or not Supplier may have been negligent or at fault (i) for Supplier's breaches of the terms of the ABB GTC/Serv, the respective Order, or the underlying contractual relationship, and (ii) for any claim (except indemnification for Intellectual Property Right infringements for which Clause 6 applies) made by a third party (including employees of Supplier) against Customer in connection with the Services to the extent that the respective liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the contracted Services provided by Supplier and/or its sub-contractors. Supplier shall defend Customer against any third party claims.

9.2 Supplier shall be responsible for observance of all of its suppliers and/or sub-contractors, and it shall be responsible for the acts, defaults or neglects of any of its suppliers and/or subcontractors, its agents, servants or workmen as fully as if they were the acts, defaults or neglects of Supplier.

9.3 The provisions of this Clause 9 shall survive any performance, acceptance or payment pursuant to this ABB GTC/Serv and shall extend to any substituted or remedial services provided by Supplier.

9.4 Unless otherwise expressly stated in the respective Order, Supplier shall maintain in force appropriate liability insurance and employer's liability insurance with reputable and financially sound insurers covering the liability arising out of the respective Order. Nothing contained in this Clause 9 shall relieve Supplier from any of its contractual or other legal liabilities. The insured amount cannot be considered nor construed as limitation of liability.

## 10. REMEDIES

10.1 If Supplier fails to comply with any of the terms of the respective Order and/or ABB GTC/Serv, Customer shall be entitled to avail itself of any one or more of the following remedies at its discretion:

10.1.1 To terminate the Order and/or the underlying contractual relationship;

10.1.2 To give Supplier the opportunity at Supplier's expense to carry out any additional work necessary to ensure that the terms and conditions of the Order and the ABB GTC/Serv are fulfilled;

10.1.3 To carry out (or to instruct a third party to carry out) at Supplier's expense any additional work necessary to make the Services comply with the Order and the ABB GTC/Serv;

10.1.4 To refuse to accept any further Services, but without exemption from Supplier's liability for the defective Services provided by Supplier;

10.1.5 To claim such damages as may have been sustained by Customer as a result of Supplier's breaches of the respective Order and/or ABB GTC/Serv.

## 11. TERM AND TERMINATION OF ORDERS

11.1 The respective contractual relationship established by an Order under this ABB GTC/Serv may be terminated for any reason by Customer upon giving Supplier thirty (30) calendar days written notice, unless otherwise expressly stated in the relevant Order. In such event Customer shall compensate Supplier for the already executed but unpaid parts of the Services. No further compensation shall be due to Supplier.

11.2 Customer may terminate an Order and/or a contractual relationship under the ABB GTC/Serv with Supplier at any time by written notice if Supplier commits a breach of the respective Order and/or ABB GTC/Serv which (in the case of a breach capable of a remedy) it does not remedy within thirty (30) calendar days of receiving written notice of the breach. In such event Customer shall have no obligation to compensate Supplier for the already executed but unpaid parts of the Services and Supplier shall be obliged to pay back to Customer any remuneration received from Customer for the already executed parts of the Services.

11.3 In the event of termination Customer may decide to become owner or licensee of the Work Products as provided under Clause 5 (Intellectual Property). In such event Customer shall pay (if not already paid in accordance with sub-clause 11.1) for the respective Work Products on a pro-rata basis (e.g. in proportion to the number of hours, days of work etc already spent by Supplier) or as otherwise expressly agreed by duly authorised representatives of both Parties.

11.4 The termination of Orders, however arising, will be without prejudice to the rights and duties of Customer accrued prior to termination.

11.5 Upon termination Supplier shall immediately and at Supplier's expense safely return to Customer all property and information of Customer then in its possession or under its control, and provide Customer with the complete information and documentation about the already executed parts of the Services.

11.6 The obligations set forth in Clauses 5, 6, 7 and 9 shall survive termination.

11.7 The obligations set forth under Clause 8 (Confidentiality) shall be valid for a period of five (5) years from completion of the Services or termination of the Order unless otherwise agreed between the Parties.

## **12. FORCE MAJEURE**

12.1 Neither Party shall be liable for any delay in performing or for failure to perform its obligations under a respective Order if the delay or failure results from an event of "Force Majeure."

12.2 Force Majeure means an event that was not foreseeable by the affected Party at the time of execution of the respective Order, is unavoidable and outside the control of the affected Party, and for which the affected Party is not responsible, provided such event prevents the affected Party from performing the respective Order despite all reasonable efforts, and the affected Party provides notice to the other Party within five (5) calendar days from occurrence.

12.3 If an event of Force Majeure occurs which exceeds thirty (30) calendar days either Party shall have the right to terminate the relevant Order and/or contractual relationship for Services forthwith by written notice to the other Party. Each Party shall use its reasonable endeavours to minimise the effects of any event of Force Majeure.

## **13. ASSIGNMENT AND SUB-CONTRACTING**

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

13.2 Customer may at any time assign, transfer, encumber, sub-contract or deal in any other manner with all or any of its rights or obligations under the respective Order and/or ABB GTC/Serv to any of its Affiliates.

## **14. NOTICES**

Any notice shall be given by sending the same by mail or by fax or by e-mail to the address of the relevant Party or to such other address as such Party may have notified to the other for such purposes. E-mails 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.

## **15. WAIVERS**

Failure to enforce or exercise, at any time or for any period, any term of the ABB GTC/Serv or an Order 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.

## **16. GOVERNING LAW AND DISPUTE SETTLEMENT**

The respective Order and/or ABB GTC/Serv, shall be governed by and construed in accordance with the laws of the country (and/or the state, as applicable) of Customer's legal registration, under exclusion of its conflict of law rules, and the United Nations Convention on International Sale of Goods. Any dispute or difference arising out of or in connection with the respective Order and/or ABB GTC/Serv, including any question regarding its existence, validity or termination or the legal relationships established by the respective Order and/or ABB GTC/Serv, which cannot be settled amicably, shall be submitted to the exclusive jurisdiction of the competent courts of the country (and/or the state, as applicable) of Customer's legal registration, unless otherwise agreed in writing between the Parties. However, Customer shall not be prevented from enforcing its own Intellectual Property Right remedies, or seeking in the competent courts of any country an injunction or other interim relief remedy.

## **17. SEVERABILITY**

The invalidity or unenforceability of any term or of any right arising pursuant to the ABB GTC/Serv and/or the Order shall not adversely affect the validity or enforceability of the remaining terms and rights, and the ABB GTC/Serv 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.

## **18. SURVIVAL**

Provisions of the ABB GTC/Serv 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.

## **19. ENTIRETY**

The ABB GTC/Serv and the Order constitute the entire agreement and understanding between the Parties and replace any prior agreement, understanding or arrangement between the Parties, whether oral or in writing. The relationship of the Parties is that of independent parties dealing at arm's length and nothing in this underlying contractual relationship shall be construed to constitute Supplier as an agent or employee of Customer or so as to have any kind of partnership with Customer, and Supplier is not authorised to represent Customer as such.

## **20. FURTHER ASSURANCES**

The Parties shall do and execute all such further acts and things as are reasonably required to give full effect to the rights given and the transactions contemplated by the respective Order and/or ABB GTC/Serv.