

ABB GENERAL TERMS AND CONDITIONS FOR R&D WORK AND RELATED SERVICES (ABB GTC/R&D 2012-1)

DATE: September 01, 2012

FOR: ABB Affiliates' purchases of R&D work and R&D related services, excluding non-technical consultancy services (commercial, business, legal, tax, and other professional or consultancy services).

1. DEFINITIONS AND INTERPRETATION

1.1 In this document

“ABB GTC/R&D”: means the present ABB General Terms and Conditions for R&D Work and related 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 a Party, by virtue of a controlling interest of 50 % or more of the voting rights or the capital;

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

“Customer”: means ABB Technology Ltd, Zurich, Switzerland, or any other ABB Affiliate ordering R&D Work from a Supplier;

“Customer Representative”: means the representative to be appointed by Customer under Clause 4.3;

“Data”: means any information regarding the ordered R&D Work contained in or processed by Supplier owned information processing facilities or other information processing facilities temporarily connected to Supplier's corporate network, or third party owned systems operated on behalf of Supplier;

“Employee”: means a person engaged by Supplier in the process of providing R&D Work;

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

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

“Know-how”: means a body of information and data that is Secret, Substantial, and Identified in any appropriate form. For this purpose: (i) **“Secret”:** means that the Know-how package as a body or in the precise configuration and assembly of its components is not generally known or easily accessible, so that part of its value consists in the lead which the receiving party gains when it is communicated to it; it is not limited to the narrow sense that each individual component of the Know-how should be totally unknown or unobtainable outside Supplier's scope of activities or business; (ii) **“Substantial”:** means that the Know-how includes information which must be useful, i. e., can reasonably be expected at the date of sending an Order to be capable of improving the competitive position of Supplier, for example by helping it to enter a new market or giving it an advantage in competition with other manufacturers or providers of services who do not have access to the secret Know-how or other compatible secret Know-how connected with the ordered R&D Work; (iii) **“Identified”:** means that the Know-how is described or recorded in such a manner as to make it possible to verify that it satisfies the criteria of secrecy and substantiality and to ensure that the user is not unduly restricted in the exploitation of the Know-how to be identified; the Know-how can either be set out in the R&D Work documentation to be supplied by Supplier or in a separate document or recorded in any other appropriate form at the latest when the R&D Work documentation is transferred to Customer;

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

“Order”: means Customer's request to Supplier to perform R&D Work as specified in the Order form and in the Order related documents, such as specifications, drawings and annexures expressly referred to in or attached by Customer to the Order;

“Party”: means either Customer or Supplier;

“R&D Work”: means the research and development work, including but not limited to technical consultancy, engineering and related services, to be performed by Supplier according to the Contract;

“Supplier”: means the Party (including ABB Affiliates) performing the R&D Work for Customer on the basis of the Contract;

“Supplier Representative”: means the representative to be appointed by Supplier under Clause 3.2;

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

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

“Work Product”: means all results, materials, products, and the related Know-how arising from or in relation to the R&D Work to be provided or developed under the Contract, or otherwise provided by Supplier or its subcontractors under the Contract in any form or media, including without limitation to computer programs, data, diagrams, reports, specifications (including drafts), however in no event including materials provided by Customer for implementation into the Work Product.

1.2 Unless otherwise specified in the present ABB GTC/R&D:

1.2.1 References to Clauses are to Clauses of the ABB GTC/R&D;

1.2.2 Headings to Clauses are for convenience only and do not affect the interpretation of the ABB GTC/R&D;

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 The ABB GTC/R&D (latest version as provided by Customer to Supplier) shall apply if (i) Supplier accepts Customer's Order for purchase of R&D Work, or (ii) the Parties conclude an agreement for purchase of R&D Work, provided that such Order or agreement expressly refers to and incorporates this ABB GTC/R&D as terms and conditions applicable to the respective Contract.

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

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

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

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

3. SUPPLIER'S RESPONSIBILITIES

3.1 Supplier shall perform the R&D Work:

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 the highest professional standards attained by companies or research institutions offering R&D Work of the type offered by Supplier; and

3.1.3 In such a way as not to cause any default or malfunction in Customer's technology, or in the products for which the results of the R&D Work are used, or in related software or systems of Customer or authorized users of the R&D Work (e. g. Customer's licensees); and

3.1.4 In such a way as to conform in all respects with the Contract and related specifications.

3.2 If requested by Customer, Supplier shall appoint Supplier Representative who shall be the responsible contact person with regard to the performance of Supplier's obligations pursuant to the Order. Supplier shall notify Customer of the contact details of Supplier Representative and shall keep Customer informed of any changes to Supplier Representative.

3.3 R&D Work provided by Supplier must not contain Open Source Software. In the event that provision of R&D Work requires use of Open Source Software, Supplier must fully specify and inform Customer about all Open Source Software planned to be implemented into the R&D Work to be provided under an Order (including detailed explanation of the functionality of each Open Source Software component), and obtain Customer's prior written approval for such use. In the event Customer has approved the use of Open Source Software by Supplier or its subcontractors expressly in writing, Supplier confirms that it has used, modified, and/or further developed Open Source Software in full compliance with the underlying Open Source Software licence terms and conditions as approved by Customer.

3.4 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 R&D Work performed; price (total amount invoiced); currency; tax or VAT amount; tax or VAT No.; payment terms.

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

3.6 Supplier's invoices shall specify the cost(s) of accommodation, living costs, travelling and any other ancillary expenses reasonably and properly incurred by its Employees in connection with the performance of the R&D Work unless otherwise provided by law. The cost of expenses, materials, and third party services shall be passed through by Supplier to Customer without profit mark-up (at cost) unless otherwise agreed in writing between the Parties. 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.

3.7 Customer may issue Variation Orders to Supplier to alter, amend, omit, add to, or otherwise change R&D Work ordered from Supplier or parts thereof, and Supplier shall carry out such Variation Orders under the Contract. In such event Supplier shall only be entitled to additional compensation and extension of time for additional R&D Work forming part of a Variation Order. Agreed unit prices stated in the Order or any other document agreed between Customer and Supplier shall apply.

3.8 In no event Supplier shall suspend performing R&D Work to Customer.

3.9 Supplier shall allow Customer to inspect and to test the R&D Work or parts of it at any time prior to the completion of the R&D Work.

3.10 In the event a Work Product contains software, Supplier shall provide Customer with the source code in addition to copies of the machine readable version and any other documentation specified in the Order.

4. CUSTOMER'S RESPONSIBILITIES

4.1 In consideration of the R&D Work performed by Supplier under the ABB GTC/R&D, Customer shall pay to Supplier the purchase price stated in the Order provided the invoice fulfils the requirements of Clauses 3.4, 3.5 and 3.6.

4.2 Customer reserves the right to set off such amount owed to Supplier or withhold payment for R&D Work not performed in accordance with the Contract.

4.3 Customer agrees to appoint Customer Representative who shall be Supplier's first point of contact in respect of R&D Work and who shall be responsible for assigning any additional tasks or modifications to duties envisaged by the ABB GTC/R&D. Customer shall notify Supplier of the contact details of Customer Representative and shall keep Supplier informed of any changes to Customer Representative.

5. INTELLECTUAL PROPERTY

5.1 Supplier agrees that, during the performance of R&D Work under the Contract, it will not enter into any agreement, arrangement, joint venture, collaboration, competitive project or other dealing whatsoever with any other person or body which would affect or conflict with the subject of the Contract, the rights of Customer under it, or the general objectives of the R&D Work.

5.2 Supplier assigns herewith to Customer, to the extent permissible under applicable local law, with full title guarantee, full ownership rights in and to any Intellectual Property and Know-how created or arising from the R&D Work ("Work Products") for the full duration of such rights, wherever in the world enforceable, and shall procure such an assignment from the Employee, individual owner, Supplier Representative or any other party who shall engage in the R&D Work. In addition Supplier shall protect all rights in and to any Intellectual Property and Know-how created or arising from the R&D Work by requiring such parties to enter into a confidentiality agreement. Supplier further agrees to (or in the case of the Employee or any other party it shall engage in the R&D Work to procure that they shall) execute, upon Customer's request and at Customer's cost, all further documents and assignments and do all such further things as may be necessary to perfect Customer's title to the Intellectual Property or to register Customer as owner of the Intellectual Property Rights 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 a royalty free/fully paid-up,

worldwide, irrevocable, non-exclusive, perpetual licence to use the R&D Work, including but not limited to a right to further improve, develop, market, distribute, sub-license, exploit or otherwise use the R&D Work in any way.

5.3 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 Affiliate, or the respective third party owner. To the extent that Pre-Existing Works are embedded in any Work Products, Customer and its Affiliates hereby are granted a worldwide, irrevocable, perpetual, non-exclusive, royalty free/fully paid-up licence to use the Pre-Existing Works as part of such Work Products, including marketing and sale of products or services containing Pre-Existing Works, and including the right to sub-license the same to a third party solely for such party's purposes of manufacturing and sale of products or rendering of services to Customer and/or its Affiliates. Supplier shall not be prevented or restricted by the ABB GTC/R&D from using any Know-how created by Supplier in the course of providing the R&D Work for the purposes of its own research and development work. Any other use of Customer's Intellectual Property requires prior written licence agreement. The provisions of this ABB GTC/R&D regarding confidentiality shall remain unaffected.

5.4 Supplier confirms that Customer shall have all rights of further development, promotion, marketing, manufacture, distribution, exploitation and dealing in relation to the results of the R&D Work and the Intellectual Property created or arising from the R&D Work.

5.5 Without prejudice to the assignments in Clauses 5.2 and 5.3, Supplier agrees that, if requested by Customer, it will at the expense of Customer co-operate with Customer in making patent or other applications for registration of Intellectual Property Rights in respect of the results of the R&D Work.

5.6 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.

5.7 To the full extent permissible by applicable laws, Supplier shall settle with the Employee or any other party it shall engage in the R&D Work all rights of compensation and obtain waivers of moral rights arising as a result of the R&D Work from the Employee or any other party it shall engage in the R&D Work.

5.8 For the avoidance of doubt, Customer shall have the right to sub-license, assign, and otherwise transfer its rights under Clauses 5.2 and 5.3.

5.9 Supplier shall refrain from any action prejudicial to the subsistence of Intellectual Property Rights created or arising from the R&D Work and from action prejudicial to the assignments in Clauses 5.2 and 5.3.

5.10 Subject always to Clauses 5.2 and 5.3 and the express prior written consent of Customer, Supplier shall have the right to use the Intellectual Property created or arising from the R&D Work as Work Products for the purposes of its own research and development work, 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. Such consent of Customer may exclude specified fields of application or business, and shall not imply consent to any use of the Intellectual Property resulting from the R&D Work by Supplier or a third party after execution of the Contract. If Supplier wants to use the R&D Work for its own non-research business purposes, it has to obtain a licence under a separately concluded agreement from Customer.

6. INTELLECTUAL PROPERTY RIGHT INFRINGEMENTS

6.1 In the event Supplier's R&D Work infringes any third party Intellectual Property Rights, Supplier shall, notwithstanding anything provided to the contrary or otherwise contained in this ABB GTC/R&D, provide IPR Indemnification to Customer. The IPR Indemnification applies whether or not Supplier may have been negligent or at fault and does not limit any further compensation rights of Customer. Supplier's obligation to reimburse 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 R&D Work provided by Supplier.

6.2 If a third party claims from Customer any compensation for infringement of its Intellectual Property Rights caused by Supplier, Customer may without prejudice to its rights under Clause 6.1 also request at its discretion and at Supplier's cost that Supplier (i) procures for Customer the right to continue using the R&D Work; (ii) modifies the R&D Work so that it ceases to be infringing; or (iii) replaces the R&D Work so that it becomes non-infringing.

6.3 In the event Supplier cannot fulfil Customer's above request, Customer shall be entitled to terminate the Contract, to reclaim all sums which Customer has paid to Supplier under the Contract and to claim compensation in accordance with Clause 6.1 and for any other costs, losses or damages incurred.

7. COMPLIANCE WITH RELEVANT LAW

7.1 The R&D Work covered by this ABB GTC/R&D 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/R&D 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 may be considered by the other Party to be a material breach of the respective Contract, and shall entitle such Party to terminate such Contract with immediate effect, without prejudice to any further right or remedies under the Contract 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 Contract.

7.5 Upon signing a Contract, 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. Supplier agrees to perform its contractual obligations under this ABB GTC/R&D and the Contract with substantially similar standards of ethical behaviour stated in the above mentioned ABB Codes of Conduct.

7.6 Supplier must comply with the ABB Lists of Prohibited and Restricted Substances (available under www.abb.com - Supplying to ABB - Doing Business with ABB).

8. CONFIDENTIALITY & DATA PROTECTION

8.1 Supplier shall:

8.1.1 Keep in strict confidence all Intellectual Property, Know-how and 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 R&D Work (whether before or after acceptance of the Contract). Supplier shall restrict disclosure of such confidential material to such of its Employees, students, agents or subcontractors as need to know the same for

the purpose of the performance of the R&D Work to Customer. Supplier shall ensure that such Employees, students, agents or subcontractors are subject to the same obligations of confidentiality as applicable to Supplier;

8.1.2 Not disclose to third parties without the express prior written consent of Customer any results of work performed as part of the R&D Work, apply reasonable safeguards against the unauthorised disclosure of Customer's confidential 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 and/or rules and regulations applicable to Permitted Additional Recipients ensuring confidentiality of such information;

8.1.3 Take all necessary steps to ensure that Customer's Data or information which come into Supplier's possession or control in the course of performing the R&D Work is protected. In particular Supplier shall not (i) use Customer's Data or information for any other purposes than for performing the R&D Work, or (ii) reproduce the Data or information in whole or in part in any form except as may be required by the Contract, or (iii) disclose Customer's Data or information to any third party or persons 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 performing the R&D Work, and for transferring to and use of the Work Products and all related information to Customer, and shall provide updates to Customer if so requested by Customer;

8.1.5 Ensure that no publication of work connected with the R&D Work occurs without the express prior written consent of Customer.

8.2 Supplier shall procure that the obligations in Clause 8.1 are observed by its Employees, students, agents or subcontractors and by any party retained by Supplier including Supplier Representative and any other person who shall engage in the R&D Work by Supplier's decision.

8.3 Supplier agrees to notify Customer immediately if it becomes aware of any disclosure or breach of the obligations in this Clause 8. At the request of Customer, Supplier shall take all such measures as are necessary to prevent further disclosure.

8.4 The provisions of this Clause 8 shall not apply to:

8.4.1 Any information which is in the public domain at the date of the Contract or which subsequently comes into the public domain other than by breach of these confidentiality provisions or other confidentiality agreement;

8.4.2 Any information already in the possession of Supplier at the date of the Contract, other than under an obligation of confidentiality, except for information received from Customer, for which Clause 8.5 shall apply;

8.4.3 Any information obtained without obligation of confidence from a third party not in breach of a confidentiality agreement with Customer concerning the information obtained.

8.5 The provisions of this Clause 8 shall be deemed effective from the date first contacts were established between the Parties with respect to the subject matter of the R&D Work.

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

9. WARRANTY

9.1 Supplier warrants that it has full power and authority under its articles of association, statutes, company constitution or under other relevant basic organisational documents and applicable mandatory laws and has

taken all necessary action and has obtained all authorisations, licences, consents and approvals to execute and perform the Contract.

9.2 Supplier warrants that it has not, prior to accepting a Contract of Customer, entered into any agreement, arrangement, joint venture, collaboration, competitive project or other dealing whatsoever with any other person or body which would affect, conflict with or prejudice the ABB GTC/R&D or the rights of Customer under it, or which would prejudice the general objectives of the R&D Work, and that none of its Employees, students, agents, subcontractors or other persons engaged in the R&D Work has done so.

9.3 Supplier warrants that it owns absolutely at the date of delivery to Customer (and shall, where necessary, obtain appropriate assignments to it and waivers in favour of it), to the extent permissible under applicable local law, all the rights in and in relation to the Intellectual Property created or arising from the R&D Work.

9.4 Supplier warrants that the materials utilized by Supplier, all modifications and all software documentation and other deliverables provided to Customer by Supplier in the course of performing the R&D Work will not infringe the Intellectual Property Rights of any third party.

10. REMEDIES

In case of breach of warranty under Clause 9 (Warranty) or if Supplier otherwise fails to comply with any of the terms of the Contract, Customer shall give notice in writing to Supplier of such breach and provide Supplier an opportunity to swiftly remedy it. If no Supplier action to remedy such breach has been taken within seven (7) calendar days of receiving such Customer notification, Customer shall be entitled to any one or more of the following remedies at its own discretion and at Supplier's own expense:

10.1 To give Supplier another opportunity to carry out any additional work necessary to ensure that the terms and conditions of the Contract are fulfilled;

10.2 To carry out (or to instruct a third party to carry out) any additional work necessary to make the R&D Work compliant with the Contract;

10.3 To obtain prompt replacement of any defective R&D Work not conforming with the Contract by defect-free R&D Work;

10.4 To refuse to accept any further R&D Work, but without exemption from Supplier's liability for the defective R&D Work performed by Supplier;

10.5 To claim such damages as may have been sustained by Customer as a result of Supplier's breaches of the respective Contract;

10.6 To terminate the Contract in accordance with Clause 12.

11. LIABILITY

11.1 Without prejudice to applicable mandatory law Supplier shall compensate Customer for all damages and losses in connection with the R&D Work whether or not Supplier may have been negligent or at fault (i) for Supplier's breaches of the terms of the ABB GTC/R&D, the respective Order, or the Contract, 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 R&D Work to the extent that the respective liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the contracted R&D Work performed by Supplier and/or its subcontractors. Supplier shall defend Customer against any third party claims.

11.2 In no event shall Supplier be liable for the following indirect or consequential damages: loss of revenue and loss of profit.

11.3 Supplier shall be responsible for observance of all of its suppliers and/or subcontractors, and it shall be responsible for the acts, defaults or neglects of any of its suppliers and/or subcontractors, its agents, students or Employees as fully as if they were the acts, defaults or neglects of Supplier.

11.4 The provisions of this Clause 11 (Liability) shall survive any performance, acceptance or payment pursuant to this ABB GTC/R&D and shall extend to any substituted or remedial R&D Work provided by Supplier.

11.5 Unless otherwise expressly stated in the Contract, 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 Contract. Nothing contained in this Clause 11.5 or in any of Supplier's insurance terms and conditions shall relieve Supplier from any of its contractual or other legal liabilities. The insured amount cannot be considered nor construed as limitation of liability.

11.6 Notwithstanding anything to the contrary in this ABB GTC/R&D, indemnification for Intellectual Property Right infringements shall be governed exclusively by Clause 6 (Intellectual Property Right Infringements).

12. TERM AND TERMINATION

12.1 The respective Contract may be terminated for convenience by either Party upon giving the other Party thirty (30) calendar days written notice, unless otherwise expressly stated in the relevant Contract. In the event of termination by Supplier, Customer shall have the right to review the performed part of the R&D Work (and all respective documentation), and the right to buy and to become legal and beneficial owner of the already performed part of the R&D Work, which shall be regarded a Work Product. In such event, Customer shall pay for the performed part of the R&D Work 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 authorized representatives of both Parties, however in no event more than the agreed purchase price for the R&D Work under the respective Contract. No further compensation shall be due to Supplier. For the transfer of the ownership title Clause 5.2 shall apply. In the event Customer does not exercise its right to buy and to become legal and beneficial owner of the already performed part of the R&D Work, Customer shall have no obligation to compensate Supplier for the already performed part of the R&D Work. In the event of termination by Customer, Customer shall pay to Supplier the value of the already performed part of the R&D Work and proven direct costs reasonably incurred by Supplier for the unperformed part of the R&D Work, however in no event more than the agreed purchase price for the R&D Work under the respective Contract. No further compensation shall be due to Supplier. For the transfer of the ownership title Clause 5.2 shall apply.

12.2 In the event of Supplier's breach of the Contract, including a breach of warranty, Customer shall be entitled to terminate the respective Contract if Supplier fails to take adequate and timely actions to remedy a breach as requested by Customer in accordance with Clause 10 (Remedies). In such event, Customer shall have the right to review the performed part of the R&D Work (and all respective documentation), and the right to buy and to become legal and beneficial owner of the already performed part of the R&D Work, which shall be regarded a Work Product. In such event, Customer shall pay for the performed part of the R&D Work 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 authorized representatives of both Parties, however in no event more than the agreed purchase price for the R&D Work under the respective Contract. No further compensation shall be due to Supplier. For the transfer of the ownership title Clause 5.2 shall apply. In the event Customer does not exercise its right to buy and to become legal and beneficial owner of the already performed part of the R&D Work, Customer shall have no obligation to compensate Supplier for the already performed part of the R&D Work and Supplier shall be obliged to pay back to Customer any remuneration received from Customer for the R&D Work.

12.3 Customer shall have the right to terminate the Contract at any time for failure or impossibility to achieve the stated purpose of the R&D Work, or if a key R&D worker ceases to be available to work on the project and the replacement proposed by Supplier is not accepted by Customer. In such event Customer shall have the obligation to compen-

sate Supplier for the already performed part of the R&D Work, and Customer shall become the legal and beneficial owner of the already performed part of the R&D Work which shall be regarded a Work Product. For the transfer of the ownership title Clause 5.2 shall apply.

12.4 Upon termination for any reason Supplier shall immediately and at Supplier's expense:

12.4.1 Safely return to Customer all property and information of Customer then in its possession or under its control; and

12.4.2 Provide Customer with the complete information and documentation about the already performed part of the R&D Work and of methods (e. g. specific techniques, Know-how etc.) used in connection with or for the provision of the R&D Work required by Customer to decide about exercising of its right to buy and to become legal and beneficial owner of such already performed part of the R&D Work in accordance with this Clause 12 (Term and Termination).

12.5 The obligations set forth in Clauses 5 (Intellectual Property), 6 (Intellectual Property Right Infringements), 7 (Compliance with Relevant Law) and 9 (Warranty) shall survive termination. The obligations set forth under Clause 8 (Confidentiality & Data Protection) shall be valid for a period of five (5) years from completion of the R&D Work or termination of the Contract unless otherwise agreed between the Parties.

13. FORCE MAJEURE

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

13.2 Force Majeure means an event that was not foreseeable by the affected Party at the time of execution of the respective Contract, 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 Contract despite all reasonable efforts, and the affected Party provides notice to the other Party within five (5) calendar days from occurrence of the respective event of Force Majeure.

13.3 If an event of Force Majeure occurs which exceeds three (3) calendar months either Party shall have the right to terminate the relevant Contract forthwith by written notice to the other Party without liability to the other Party. Each Party shall use its reasonable endeavours to minimise the effects of any event of Force Majeure.

14. ASSIGNMENT AND SUBCONTRACTING

14.1 Supplier shall not assign, subcontract, transfer, or encumber with third party rights a Contract or any parts thereof (including any monetary receivables from Customer) without prior written approval of Customer, as expressly provided under this Clause 14.

14.2 In the event Supplier has obtained Customer's prior written approval to subcontract R&D Work or parts or specified aspects of the R&D Work Supplier shall subcontract the respective R&D Work in accordance with the following conditions:

14.2.1 Supplier must conclude a written agreement with the subcontractor regarding the subcontracted R&D Work and the applicable terms and conditions; and

14.2.2 The subcontractor's research workers, employees, and representatives involved in the execution of the subcontracted R&D Work must be documented, and the subcontractor shall be responsible that the involved parties enter into confidentiality agreements which comply with codes of professional conduct ensuring such confidential information is kept protected. To the extent permissible under applicable local law the subcontractor shall further agree to (or in the case of an employee or any other party it shall engage in the R&D Work to procure that they shall) execute all further documents and assignments and do all such further things as may be necessary to perfect Customer's title to the Intellectual Property Rights, or to register Customer as owner of any Intellectual Property Rights which can be registered; and

14.2.3 The subcontractor may use Supplier's information about Customer's or Supplier's Intellectual Property exclusively for the R&D Work

ordered by Supplier on the basis and subject to the terms and conditions of the subcontract with Supplier; any use of information about Customer's or Supplier's Intellectual Property by the subcontractor for purposes other than defined in the subcontract shall be expressly prohibited.

14.3 Supplier must not grant to the subcontractor any right or licence to use Customer's or related Supplier's Intellectual Property for any other purposes than for execution of the R&D Work.

14.4 In the event Supplier concludes subcontracts not complying with the above Clauses, or not containing fully effective and legally enforceable clauses following the requirements of the above Clauses, Customer shall be entitled to terminate the relevant Contract, or the related underlying contractual relationship with Supplier independent from any other reasons for termination with immediate effect, and to take all such steps as in the total discretion of Customer shall be desirable for the protection of Customer's and/or its Affiliates' Intellectual Property.

14.5 Customer may at any time assign, transfer, encumber, subcontract or deal in any other manner with all or any of its rights or obligations under the respective Contract to any of its Affiliates.

15. RELATIONSHIP OF PARTIES

The relationship between Customer and Supplier is that of companies dealing as non-associated companies ("at arm's length") and nothing in the ABB GTC/R&D and the Contract shall be construed so as 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.

16. NOTICES

Any notice shall be given by sending the same by registered mail, courier, fax or by e-mail to the address of the relevant Party set out in the Order 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 authorized representatives of the Parties.

17. VARIATIONS

No variation of or amendment to the ABB GTC/R&D shall be binding unless made in writing and signed by duly authorised representatives of the Parties.

18. WAIVERS

Failure to enforce or exercise, at any time or for any period, any term of the ABB GTC/R&D or a Contract 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.

19. GOVERNING LAW AND DISPUTE SETTLEMENT

19.1 This ABB GTC/R&D and the respective Contract shall be governed by and construed in accordance with the laws of the country (and/or the state, as applicable) of Customer's legal registration, however under exclusion of its conflict of law rules and the United Nations Convention on International Sale of Goods. In the event Customer is registered in the

United States of America, the applicable law shall be the laws of the State of New York.

19.2 For domestic dispute resolution matters, whereby Customer and Supplier are registered in the same country, any dispute or difference arising out of or in connection with the respective Contract and/or ABB GTC/R&D, including any question regarding its existence, validity or termination or the legal relationships established by the respective Contract and/or ABB GTC/R&D, which cannot be settled amicably, shall be submitted to the jurisdiction of the competent courts of such country, unless other courts or arbitration are agreed in writing between the Parties.

In the event Customer and Supplier are registered in the United States of America, the disputes shall be submitted to the State Courts of New York or the U. S. District Court for the Southern District of New York.

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

20. SEVERABILITY

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

21. SURVIVAL

Provisions of the ABB GTC/R&D and/or the Contract which either are expressed to survive its termination or from their nature or context it is contemplated that they are to survive such termination shall remain in full force and effect notwithstanding such termination.

22. ENTIRETY

The ABB GTC/R&D and the Contract constitute the entire agreement and understanding between the Parties with respect to the relevant R&D Work and replace any prior agreement, understanding or arrangement between the Parties with respect to the same subject matter, whether oral or in writing.

23. 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 this ABB GTC/R&D and the Contract.