



## TERMS AND CONDITIONS FOR THE SUPPLY OF WORKS

### PREAMBLE

1. These Terms and Conditions (hereinafter referred to as “**OP\_SoD**”) regulate the conditions in performing a Works between the company ABB s.r.o., with registered office at Vyskočilova 1561/4a, Michle, 140 00 Praha 4, identification No.: 49682563, incorporated in the Commercial Register maintained by the Municipal Court in Prague, under the file no.: C 79391 (hereinafter referred to as “**Contractor**”) and the Purchaser. Any and all deviations from OP\_SoD must be agreed upon in writing in the respective Contract. The Works are to be performed exclusively for the benefit of the Purchaser.
2. An offer to conclude the Contract is always revocable and may be revoked if the revocation is delivered to the Purchaser before the acceptance of the offer is delivered to the Contractor.

### DEFINITIONS

3. In these OP\_SoD, the mentioned terms shall have the following meaning:
  - “**Contract**” means a contract for Works concluded between the parties including all its annexes and amendments.
  - “**Works**” means creation, assembly, maintenance or repair of a particular thing or performance of another activity with a materially expressed result according to the specification mentioned in the Contract.

### PRODUCTS INFORMATION

4. All the data concerning the weight, dimensions, power output parameters, prices and other information mentioned in catalogue and price lists shall be binding only to the extent that they are by reference expressly mentioned in the Contract.

### DRAWINGS AND TECHNICAL DESCRIPTIONS

5. All drawings and technical documents relating to the Works submitted by one party to the other, prior or subsequent to the formation of the Contract shall remain exclusive property of the submitting party and can only be used for the purpose for which they were provided.
6. The receiving party is not allowed to use such documents otherwise as stated in the Art. 5 hereof, to procure copies thereof, to reproduce and to disclose them to a third party without consent of the submitting party. The end user of the Works shall not be deemed as a third party, if he is not identical to the Purchaser.

### TESTS BEFORE SHIPMENT

7. Performance of the tests before shipment has to be explicitly agreed upon in the Contract. Tests are being carried out at the place of the manufacture during the normal working hours and in accordance with the regulations applicable in the country of manufacture.

8. Unless stipulated otherwise, the Contractor shall notify the Purchaser of the date these tests are to be carried out, at least 5 business days in advance, to enable the Purchaser or his representatives to be represented at the tests. If the Purchaser is not represented, the test report shall be issued and confirmed only by the Contractor and subsequently handed over to the Purchaser.
9. The Contractor shall bear all costs for the tests before shipment carried out at the place of the manufacture, except for the travelling, accommodation and other expenses of the Purchaser’s representatives, which shall bear the Purchaser.

### PASSING OF RISK

10. Provided the Contractor performs the Works on the site either owned or otherwise arranged for by the Purchaser, the risk of damage to the Works shall bear the Purchaser. In any other cases the risk of damage to the Works shall pass to the Purchaser on the take-over date. In case the Purchaser is in delay with taking-over of the Works even after being duly called to take-over and after the Works are duly completed, the risk of damage to the Works shall pass to the Purchaser on the first day of delay with taking-over by the Purchaser.

### PURCHASER’S CO-OPERATION

11. The Purchaser shall provide the Contractor with co-operation necessary for proper execution of the Works.
12. The Purchaser is especially obliged to ensure, free of charge, fulfilment of the following conditions:
  - a) The Contractor’s personnel shall be able to start work at the Purchaser’s place or at other agreed place of performance, in accordance with the agreed time schedule. If the Contractor notifies the Purchaser sufficiently in advance, the Contractor’s personnel can perform the work also outside normal working hours.
  - b) Before the work is started, the Purchaser shall inform the Contractor, in writing, of all his safety and other regulations that the Contractor’s personnel shall observe when executing the Works. The Purchaser shall ensure healthy and safe working environment for the Contractor’s personnel during whole time of execution of the Works.
  - c) The Purchaser shall provide Contractor with suitable storage facilities, providing protection against theft or damage to the stored things. The Purchaser shall enable the Contractor’s personnel to use his hygiene and boarding facilities.
  - d) The Purchaser shall hand over to the Contractor the place of performance of the Works in the form of written hand over protocol, exactly and completely marking all underground cables and networks. Access to the place of performance of the Works shall be suitable for transport of things and equipment constituting individual parts of the Works.

## **PURCHASER' S DELAY**

13. If the Purchaser anticipates that he will be unable to carry out in time his obligations, including but not limited to the obligations mentioned in the Art. 11 and 12, he shall forthwith notify the Contractor in writing, stating the reasons and the assumed time of the remedy. In such case the Contractor is entitled to proceed in accordance with Art. 14 and 15.
14. The Contractor shall, after notification to the Purchaser, be entitled to suspend performance of the Works for the duration of the Purchaser's delay or, if appropriate, to remedy the defective situation by himself at the Purchaser's expense. In such a case, the Contractor shall proceed in reasonable and adequate manner. The time of delivery of the Works shall be extended at least by the time of the Purchaser's delay according to Art. 13, unless objectively a longer period is needed for Contractor's demobilization and remobilization of production sources and inputs connected with suspension and restart of Contractor's performance of the Contract.
15. Should the Purchaser fail to remedy his default within the reasonable additional period set by the Contractor, the Contractor is entitled to withdraw from the Contract.

## **VARIATIONS**

16. The Contractor shall execute the Works in accordance with the laws, other legal regulations and norms applicable at the time of formation of the Contract.
17. Provided that the conditions according to the Art. 20 are fulfilled, the Purchaser is entitled to require variations of the Works, until the Works has been completed.
18. The requests for variations shall be in writing and shall contain an exact description and scope of the variations required.
19. Within a reasonable time after receipt of a request for a variation of the Works, the Contractor shall notify the Purchaser, whether and how the variations can be carried out, resulting alternation to the price of the Works and time of delivery of the Works. The same notification shall be made by the Contractor in case of the changes necessary with respect to the changes in the laws, other legal regulations and norms mentioned Art. 16.
20. The Contractor shall not be obliged to carry out any variations of the Works until the parties have agreed upon the respective change in the Contract.

## **ACCEPTANCE TESTS**

21. If performance of the acceptance test is agreed between the Parties, the Contractor shall propose the date of the acceptance tests, giving the Purchaser sufficient time to prepare for and to be represented at these tests.  
  
The Purchaser shall bear all costs of the acceptance tests. The Contractor shall bear all costs relating to participation of his personnel and representatives.
22. The Purchaser shall provide, free of charge, in particular any power, lubricants, fuels, water and other materials required for the acceptance tests. The Purchaser is also

obliged to provide free of charge any labour and all other co-operation and assistance necessary for preparation and carrying out the acceptance tests.

23. If the Purchaser fails to fulfil his obligations under Art. 22, or otherwise prevents the acceptance tests from being carried out, or is not represented at the acceptance tests, even though it was notified in accordance with the Art. 21, the obligation to perform the tests ceases to exist and the tests shall be regarded as having been satisfactorily completed at the time of the commencement of the test proposed by the Contractor in his notice.
24. Unless other technical requirements are agreed, the acceptance tests shall be carried out in accordance with generally binding legal regulations and internal regulations of the Contractor.
25. If the acceptance tests show defects of the Works that prevent Works from being used for the determined purpose, or prevent safe operation of the Works, the Contractor is obliged to remedy these defects without undue delay, and, if required by the Purchaser, new acceptance tests according to the Articles 21 to 23 shall be carried out.

## **INTELLECTUAL PROPERTY**

26. Where the Work to be delivered and/or performed includes a subject protected by intellectual property, the delivery of the Work does not constitute assignment of the intellectual property right or any co-ownership of the intellectual property between the Contractor and the Purchaser.
27. The Purchaser shall not be entitled to alter any trademarks of the Contractor in such a way that they would be changed, adopted or used in a way differing from the way as they were used by the Contractor upon delivery of the Work. Where the trademarks of the Contractor are used by the Purchaser during use of the Work, the Purchaser shall state that the respective trademark is a registered trademark of the Contractor, where appropriate.
28. Where the delivered Work includes a computer programme (software), the Contractor declares that he is entitled to copyright to the software.
29. Where the delivered Work includes software, the Contractor grants a non-exclusive licence to the Purchaser to use the software in connection with operation and/or use of the delivered Work. The Purchaser is not entitled to grant any further sub-licences without prior written consent of the Contractor. The price of the licence is already included in the price of the Work.
30. The licence to the software is granted for the time period during which the Purchaser is using the Work, unless otherwise agreed upon by the Contractor and the Purchaser.
31. The software may be used only in connection with the Work. The software may not be copied, analysed, altered or connected with other software without prior written consent of the Contractor.
32. The software may be copied only for backup purposes.

33. The software may be used on more work stations used for controlling, management and/or supervising the functions of the Work. These work stations may be interconnected by a computer network.
34. The software may not be used in engineering and construction and/or operation of nuclear plants and/or nuclear equipment, air control operations and air navigation, weapon systems including missile systems and weapons of mass destruction. Nuclear plants include among other also nuclear power plants, plants for manufacturing, storage, handling and/or transportation of nuclear fuel, plants for uranium enrichment, plants for handling, transportation and/or storage of spent nuclear fuel. Nuclear plants include expressly also nuclear plants used for scientific and/or research and/or educational purposes.
42. The aggregate amount of all contractual penalties is limited by the maximum amount of 7,5 % of the total price of the Works excl. VAT.
43. If only part of Works is delayed according to the individual milestones as determined in the Contract, the contractual penalty shall be calculated from the price of the delayed part of the Work. If the Contractor subsequently completes the entire Works within the agreed time, these contractual penalties shall not be applied.
44. The contractual penalties are payable based on the penalty invoice issued by the Purchaser, but they do not become due before the take-over of the Works or the withdrawal from the Contract according to Art. 45.

#### **PERFORMANCE OF THE WORKS**

35. Due completion of the Works takes place:
  - a) when the acceptance tests have been satisfactorily completed or are regarded under the Art. 23 as having been satisfactorily completed; or
  - b) where the parties did not agree to carry out acceptance tests, when the Purchaser has received a Contractor's written notice stating that the Works has been completed, provided that the Works is free of defects preventing the Works from being used for the determined purpose or preventing safe operation of the Works.
36. As due completion of the Works is also regarded delivery of the Works with minor defects, which do not prevent Works from using it for the determined purpose, or prevent safe operation of the Works. This does not affect the Contractor's duty to remedy minor defects according to Art.49.
37. The Purchaser is not entitled to use or operate the Works or any part thereof before taking-over. If the Purchaser does so without the Contractor's written consent, the Works shall be regarded as taken-over and duly performed and the Contractor shall than be relieved of his duty to carry out the acceptance tests.
38. The parties shall sign the written report confirming hand-over and take-over of the Works. A part of such report is a list of minor defects that may exist with specification of the agreed time of remedy thereof. The date of signature of such report shall not affect the date of due completion of the Works in accordance with Art. 35 or 37.
39. Provided the Purchaser does not take-over the dully completed Works, the Works are regarded as handed-over and dully performed after the lapse of a time period set by the Contractor for hand-over of the Works.

#### **CONTRACTOR' S DELAY**

40. The Contractor's delay with completion of the Works entitles the Purchaser to contractual penalties against the Contractor, from the agreed date on which the Works should have been completed.
41. The contractual penalty shall be payable at a rate of 0,05% of the total price of the Works excl. VAT for each day of delay.

45. Should the Purchaser, as a result of the Contractor's delay, be entitled to the maximum amount of the contractual penalties, the Purchaser can withdraw from the Contract.

#### **PAYMENT CONDITIONS**

46. If not agreed otherwise in the Contract, the price of the Works means excl. VAT. The payment conditions are determined in the Contract.
47. The Purchaser's delay with payment of his monetary obligations entitles the Contractor to contractual penalty against the Purchaser amounting to 0,05 % of the outstanding amount for day of delay.
48. The Purchaser's delay with payment of his monetary obligations resulting from the Contract or any other legal relationships between the Purchaser and the Contractor entitles the Contractor to suspend the performance of the Works according to the Contract, until the full payment. The time of delivery of the Works shall be extended by such period of time.

#### **WARRANTY AND LIABILITY FOR DEFECTS**

49. THE PARTIES HAVE AGREED THAT THE CONTRACTOR'S OBLIGATION ARISING FROM ITS LIABILITY FOR DEFECTS AND WARRANTY IS TO REMEDY FOR FREE THE DULY AND TIMELY NOTIFIED DEFECTS OF THE WORKS, AT ITS OPTION, BY REPAIR OR REPLACEMENT. THE PURCHASER SHALL AT ITS COSTS PROVIDE WORKING ACCESS TO THE WORKS, DISMANTLING AND RE-INSTALLATION NECESSARY FOR REPAIR/REPLACEMENT. THE WARRANTY DOES NOT INCLUDE AN UNDERTAKING BY THE CONTRACTOR THAT DURING THE WHOLE WARRANTY PERIOD THE WORKS WILL BE FREE OF ANY DEFECTS. THE FOREGOING IS AN EXCLUSIVE DEFINITION OF RIGHTS ARISING FROM THE LIABILITY FOR DEFECTS AND WARRANTY.
50. The warranty period is 12 months from completion of the Works, however not more than 18 months from delivery of the last substantial part of the Works into the place of performance.
51. For replaced or repaired parts of the Works, shall apply the twelve-month warranty period and the warranty conditions as those applicable to the originally delivered supplies. For the remaining parts of the Works, the warranty period shall be extended only by a period equal to the period during which the Works have been out of operation as result of the defect. Any and all warranty

periods shall expire in each case at the latest 24 months after completion of the Works.

52. The Purchaser shall notify the Contractor, in writing, of any defects of the Works (including latent defects) without undue delay after the defect could have been discovered and within the warranty period. As for the defects of the Works that may cause damage, the Purchaser shall notify the Contractor immediately with subsequent written confirmation. The notification of a defect shall contain description of the defect and, as the case may be, specification how the defect is shown.

The Purchaser shall bear the risk of the damage arisen as a result of breach of his obligations under this Article.

53. On receipt of the notice under the Art. 52, the Contractor shall remedy the defects without undue delay and at his own costs. The defective parts of the Works that have been replaced shall remain in the Contractor's property.
54. If the Purchaser has notified the Contractor in accordance with the Art. 52 and no defects is found for which the Contractor is liable, the Contractor shall be entitled to compensation for the costs he has incurred in connection with the notice.
55. The warranty shall not cover the defects of the Works caused by encroachment by the Purchaser or a third party, and the defects of the Works where it is not possible to prove that they occurred due to defective material used, faulty construction or incomplete manufacture, especially the defects of the Works occurred due to normal wear and tear, faulty maintenance, non-compliance with operation manuals, excessive strain, use of inadequate operation media, chemical and electrolytic influences, construction and assembly works by other persons than the Contractor and any and all other reasons without the Contractor's default.
56. In connection with its liability for defects and warranty obligations, the Contractor shall not be obliged to remedy defects for free elsewhere than in its designated premises or at delivery place agreed in the Contract.

#### **FORCE MAJEURE**

57. Both parties are entitled to suspend performance of their obligations under the Contract for the time of duration of force majeure. The Force Majeure is deemed to be the obstacle which arose independently of the liable party's will and that prevents this party from performing its obligation, provided that it cannot be reasonably expected that the liable party could avert or overcome such an obstacle or its consequences, and further that the occurrence of such an obstacle was unpredictable at the time of formation of the Contract (hereinafter referred to as "**Force Majeure**"). Examples of the Force Majeure include especially: strike, epidemic, fire, natural disaster, mobilisation, war, insurrection, seizure of goods, embargo, blockade, prohibition on exportation or importation of material or services, ban on foreign exchange transfer, electric power taking regulation that is not culpable or any other obstacle caused by actions or omissions by any public authority, terrorist attack etc.
58. The Force Majeure makes it impossible to claim contractual penalties against the party affected by the Force Majeure.

59. The party claiming to be affected by the Force Majeure shall notify the other party of this event without delay in writing and to take all possible measures to reduce the consequences of non-performance of the contractual obligations.
60. Should the Force Majeure last for more than six months, both parties are entitled to withdraw from the Contract.
61. Both parties are aware of the outbreak of a Coronavirus causing the COVID-19 disease or any mutation of such virus (hereinafter "Epidemic") which is impacting or may impact normal business and performance of the Contract. The parties agree that the Contractor is entitled to time extension, or other reasonably required contract adjustments, if any consequences whether directly or indirectly resulting out of, or in connection with the Epidemic, lead to delays in performance of the Works.

#### **COMPENSATION FOR DAMAGE**

62. THE CONTRACTOR'S LIABILITY FOR ANY INDIRECT AND CONSEQUENTIAL DAMAGES AND/OR LOSSES WITH RESPECT TO ANY AND ALL CLAIMS ARISING OUT OF THE PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS IN CONNECTION WITH THE CONTRACT SHALL BE EXCLUDED. THE INDIRECT AND CONSEQUENTIAL DAMAGES AND/OR LOSSES SHALL MEAN IN PARTICULAR, BUT NOT LIMITED TO: LOSS OF PROFIT, ENERGY LOSS, LOSS OF USE, COSTS OF SUBSTITUTE ENERGY SUPPLY, COSTS OF CAPITAL, COSTS CONNECTED WITH DELAY, NON-COMPLIANCE OF THE WORKS WITH THE CONTRACT, NON-FULFILMENT OF THE GUARANTEED PARAMETERS ETC.
63. THE TOTAL AGGREGATE LIABILITY OF THE CONTRACTOR IN RESPECT OF ANY AND ALL DAMAGES INCLUDING THE CONTRACTUAL PENALTIES AND OTHER CLAIMS IN CONNECTION WITH BREACH OF ONE OR MORE OBLIGATIONS OF THE CONTRACTOR SHALL NOT EXCEED THE MAXIMUM AMOUNT OF 30% OF THE TOTAL PRICE OF THE WORKS EXCL. VAT.
64. None of the above limitations of the compensation for damage shall apply to the damage caused by the Contractor intentionally or by gross negligence.

#### **EXPORT CONTROL**

65. The Purchaser acknowledges that the Works may be subject to Czech and/or foreign statutory provisions and regulations regarding export control, including but not limited to, the provisions of United States Export Administration Regulations (EAR), the International Traffic in Arms Regulations (ITAR) any applicable regulations of the U.S. Department of Treasury, Office of Foreign Assets Control (OFAC) and, without export or re-export permits from the competent authorities, may not be sold, leased or otherwise transferred or used for a purpose other than that agreed upon. The Purchaser agrees to comply with such provisions and regulations. The Purchaser acknowledges that such provisions and regulations may change and are applicable to the contract according to the wording valid at the time.
66. The Purchaser agrees not to export, reexport, sell, or supply the Works and/or any ABB products, directly or indirectly, to any person included on the Specially Designated Nationals and Blocked Persons ("SDN") List, without prior notification to and explicit written approval from the Contractor.

67. The Works may neither directly nor indirectly be used in connection with development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons. The Works may also neither directly nor indirectly be used in connection with nuclear installation that means (i) any nuclear reactor, including that one with which a means of sea or air transport is equipped; (ii) any factory using nuclear fuel for the production of nuclear material and any factory for the processing of nuclear material, including any factory for the re-processing of irradiated nuclear fuel; and (iii) any facility where nuclear material is stored, including storage incidental to the carriage of such material.
68. The Works are not sold to and must not be further offered for resale to the following countries: North Korea, Somalia, Crimea, Iran, Syria.

#### **FINAL PROVISIONS**

69. The Contract is governed by the laws of the state of the registered office of the Contractor with exclusion of the conflict of law rules.
70. Any and all disputes under the Contract, including but not limited to the disputes in connection with execution and validity thereof, shall be settled by the Arbitration Court at the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic in Prague in accordance with the Act No. 216/1994 Col., on arbitrary proceeding. The arbitration board shall consist of three arbitrators. The parties shall appoint one arbitrator each. The third arbitrator, the chairman, shall be appointed upon agreement of the first two arbitrators. Should these arbitrators fail to reach an agreement, the third arbitrator shall be appointed by the chairman of the above-mentioned Arbitration Court.
71. The Contract is not concluded as an order Contract.
72. The parties have agreed that any and all rights under this Contract shall be subject to the statute of limitation of three years.
73. The parties have agreed that the section 1978 (2) and 2173 of the act no. 89/2012 Coll., the civil code, as amended shall not apply in respect of the Contract.