

# ABB GENERAL TERMS AND CONDITIONS

## FOR PURCHASE OF GOODS AND/OR SERVICES

### ABB GTC/GOODS AND/OR SERVICES (2015-1 ITALY)

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

**FOR:** ABB Affiliates' purchases of tangible movable items (goods) and/or services.

#### 1. DEFINITIONS AND INTERPRETATION

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

**“ABB GTC/Goods and/or Services”**: these ABB General Terms and Conditions for Purchase of Goods and/or Services (2015-1 Italy);

**“Affiliate”**: any entity, whether incorporated or not, which presently or in the future, directly or indirectly owns, is owned by, or is under common ownership with a Party, by virtue of a controlling interest of 50 % or more of the voting rights or the capital;

**“Contract”**: a written contract, agreement or Frame Agreement, and/or the Order for the purchase of Goods, Services and/or Work Products, in any case including and incorporating the ABB GTC/Goods and/or Services by reference as applicable terms and conditions, which is accepted by Supplier (either expressly by written statement or impliedly by fulfilling the Contract in whole or in part);

**“Customer”**: the purchasing ABB Affiliate ordering Goods, Services and/or Work Products from Supplier;

**“Customer Data”**: any data or information acquired by Supplier in preparation of or during the fulfilment of the Contract, irrespective of whether such data or information relates to Customer, its Affiliates or their respective customers or suppliers, including but not limited to all technical or commercial know-how, drawings, specifications, inventions, processes or initiatives which are of a confidential nature as well as data or information belonging to Customer or its Affiliates (i) relating to an identified or identifiable individual or legal entity or any other entity which is subject to applicable data protection or privacy laws and regulations, and/or (ii) being qualified as “personal data”, “personal information”, or “personally identifiable information” within the meaning of the applicable laws;

**“Delivery”**: delivery completion of Goods and/or Work Products by Supplier in accordance with INCOTERMS 2010 FCA (named place as specified in the Contract), unless agreed otherwise in the Contract;

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

**“Frame Agreement”**: a contract under which one or several Customers may place multiple Orders;

**“Goods”**: the tangible movable items to be delivered by Supplier in accordance with the Contract;

**“Intellectual Property (Rights)”**: all proprietary rights in results created intellectually (by thought) and protected by law, including but not limited to patents, patent applications and related divisionals and continuations, utility models, industrial designs, trade names, trademarks, copyrights (regarding software source codes, 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”**: 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 for which Supplier is responsible;

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

**“Order” or “Purchase Order” or “PO”**: Customer's order issued to Supplier for the purchase of Goods, Services and/or Work Products as specified in the Order, which is subject to the ABB GTC/Goods and/or Services and the Contract, as the case may be; an Order can be placed either (i) as an electronic Order, or (ii) as a written Order; in both cases the Order shall contain a reference to the ABB GTC/Goods and/or Services; any of Supplier's reply, correspondence, information or documentation related to Customer's Order must be provided by Supplier in the same language as used in Customer's Order;

**“Party”**: either Customer or Supplier;

**“Services”**: the services to be provided by Supplier in accordance with the Contract;

**“Supplier”**: the party providing the Goods, Services and/or Work Products to Customer in accordance with the Contract;

**“Variation Order”**: 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”**: 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”**: all materials, documents, or other items which are the result of Services provided by Supplier under the respective Contract in any form or media, including but without limitation to data, diagrams, drawings, reports, specifications and drafts.

1.2 Unless otherwise specified in the ABB GTC/Goods and/or Services:

1.2.1 References to clauses are to clauses of the ABB GTC/Goods and/or Services;

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

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

2.1 The ABB GTC/Goods and/or Services (latest version available to Supplier when entering into the Contract) are the only terms and conditions upon which Customer is prepared to deal with Supplier for the provision of Goods, Services and/or Work Products, and they 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.

2.2 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 or conditions.

2.3 Customer's Order may specify a limited time period for acceptance; after expiry of such time period without Supplier's acceptance, the Order shall no longer be binding on Customer.

2.4 Any amendments to the Contract, including the ABB GTC/Goods and/or Services, shall have no effect unless expressly agreed in writing and signed by duly authorised representatives of Customer and Supplier.

2.5 References in the ABB GTC/Goods and/or Services to any statute or statutory provision shall be construed as a reference to that statute or provision as in effect at the date when the Order was placed, unless decided otherwise by Customer.

### 3. SUPPLIER'S RESPONSIBILITIES

3.1 Supplier shall deliver the Goods and/or Work Products and provide the Services:

3.1.1 in accordance with the applicable laws and regulations;

3.1.2 in accordance with the quality standards stated under Clause 9.1 and specified in the Contract;

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

3.1.4 on the due date specified in the Contract;

3.1.5 in the quantity specified in the Contract;

3.1.6 in accordance with all specifications, specified materials, workmanship, and respective documentation;

3.1.7 in accordance with all Customer instructions, including but without limitation to its health, safety and environmental requirements and policies; and

3.1.8 fit for any particular purpose expressly or impliedly made known to Supplier in the Contract or, in absence thereof, fit for the purposes for which goods, work products, or services of the same description or the same or similar type would ordinarily be used.

3.2 Supplier shall not substitute or modify any of the materials contained in the Goods and/or Work Products, or used for provision of the Services, or make any changes to the design of the Goods and/or Work Products without Customer's prior written approval.

3.3 Supplier shall take care that the Goods and/or Work Products are contained or packaged in the manner usual for such Goods and/or Work Products or, where there is no such manner, in a manner adequate to preserve and protect the Goods and/or Work Products until Delivery.

3.4 Supplier shall submit invoices in an auditable form, complying with Supplier's and Customer's applicable local mandatory law, generally accepted accounting principles and the specific Customer requirements, containing the following minimum information: Supplier name, address and reference person including contact details (telephone, e-mail etc.); invoice date; invoice number; Order number (same as stated in the Order); Supplier number (same as stated in the Order); address of Customer; quantity; specification of Goods, Services and/or Work Products supplied; price (total amount invoiced); currency; tax or VAT amount; tax or VAT number; Authorized Economic Operator and/or Approved Exporter Authorization number and/or other customs identification number, if applicable; payment terms.

3.5 Supplier shall invoice Customer separately from despatch of the Goods and/or Work Products and/or provision of the Services. Invoices shall be sent to the billing address specified in the Order.

3.6 Expenses not agreed in writing by Customer will not be reimbursed.

3.7 Services provided and charged on the basis of hourly rates require written confirmation of Supplier's time sheets by Customer. Supplier

shall submit the respective time sheets to Customer for such confirmation in due time. Confirmation of the time sheet shall not be construed as acknowledgement of any claims. Customer shall not be obliged to pay invoices based on time sheets which are not confirmed in writing by Customer.

3.8 Customer may issue Variation Orders to Supplier to alter, amend, omit, add to, or otherwise change ordered Goods, Services and/or Work Products or parts thereof, and Supplier shall carry out all such reasonable Variation Orders. The Parties shall agree on the impact of the Variation Order on applicable prices. In case no such agreement on the price impact is reached within reasonable time, Supplier shall perform the Variation Order with the agreement that the impact on the price or possible compensation payments shall be calculated in accordance with the following principles and their hierarchical order: (i) agreed unit price list, (ii) lump sum to be agreed between the Parties, (iii) agreed cost plus profit margin basis or, (iv) as a combination of these methods. If the agreed unit price list does not cover the subject matter of the Variation Order, an additional price list used for similar goods, services and/or work products shall be agreed by the Parties and added to the existing unit price list. Supplier shall not postpone or delay the performance of a Variation Order on the grounds of dispute, or that the Variation Order is subject to acceptance by Supplier, or agreeing to the value amount, or extension of time. Variation Orders requested by Supplier shall only become effective after express written confirmation by Customer.

3.9 In no event Supplier shall suspend or delay the Delivery of any Goods and/or Work Products or the provision of any Services to Customer. In the event of Force Majeure Clause 16 shall apply.

3.10 Supplier shall hire in its own name all employees required to effectively provide the Goods, Services and/or Work Products, who shall not, under any circumstances, act as Customer's employees.

3.11 Supplier assumes full and exclusive responsibility for any accident or occupational disease occurred to its employees and its subcontractors in relation to the provision of the Goods, Services and/or Work Products.

3.12 Supplier shall be solely and exclusively responsible for any claims and/or lawsuits filed by its employees and/or subcontractors, and shall, without any limitations, defend, indemnify and hold Customer harmless from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any such claims and/or lawsuits, and any noncompliance with legislation, regulations, codes of practice, guidance and other requirements of any relevant government or governmental agency applicable to Supplier, its employees or subcontractors, and Supplier shall compensate Customer for all losses and expenses whatsoever resulting therefrom. Supplier undertakes to voluntarily and at its own cost appear in court, if requested by Customer, acknowledging its status as sole and exclusive employer, and to provide Customer with any and all requested documentation and information necessary to ensure proper legal defence of Customer in court. The preceding sentence shall not apply if and to the extent the liability or damage was caused by Customer's gross negligence or intentional act.

3.13 Customer is authorized to make any payments due to Supplier's employees and subcontractors performing Services, or providing Goods and/or Work Products under the Contract, in order to avoid lawsuits, liens or encumbrances. Such payments may be made through withholding Supplier's credits, through offsetting or in any other way. Supplier shall provide any support requested by Customer with regard to such payments and indemnify Customer for any payments made.

### 4. CUSTOMER'S RESPONSIBILITIES

4.1 In consideration of the Goods and/or Work Products delivered, or the Services provided by Supplier in accordance with the Contract, Customer shall pay to Supplier the purchase price stated in the Contract

within the agreed payment terms provided the invoice fulfils the requirements of Clauses 3.4 and 3.5. In the event that the payment terms are determined by mandatory applicable law, such terms shall prevail.

4.2 If Goods and/or Work Products delivered or Services provided are subject to inspection, testing, or acceptance by Customer and/or its authorised representatives, no payments shall become due before the results of such inspection, testing, or acceptance are available and confirm that the Goods, Services and/or Work Products conform with the Contract and with any specifications and/or patterns supplied or advised by Customer to Supplier.

4.3 Customer reserves the right to set off such amount owed to Supplier, or withhold payment for Goods, Services and/or Work Products not provided in accordance with the Contract.

## **5. DELIVERY, PERFORMANCE OF SERVICES**

5.1 Unless agreed otherwise in the Contract, the Goods and/or Work Products shall be delivered in accordance with INCOTERMS 2010 FCA, to the place defined in the Contract, or, if no such place has been defined, to Customer's place of business.

5.2 The Services shall be provided at the place specified in the Contract, or, if no such place has been specified, at Customer's place of business.

5.3 Supplier shall deliver latest at the time of acceptance of the Contract the following minimum information (unless where explicitly not required by Customer): Order number, date of Order, number of packages and contents, the customs tariff numbers of the country of consignment, and the countries of origin for all Goods and/or Work Products to be delivered. For controlled Goods, Services and/or Work Products, the relevant national export control numbers must be indicated and, if the Goods, Services and/or Work Products are subject to U.S. export regulations, the U.S. Export Control Classification Numbers (ECCN) or classification numbers of the International Traffic In Arms Regulations (ITAR) must be specified. Proofs of preferential origin as well as conformity declarations and marks of the country of consignment or destination are to be submitted without being requested; certificates of origin upon request. Supplier shall state the accurate and complete Order number disclosed to Customer on all invoices (in particular but not limited to commercial, pro forma or customs invoices). Supplier shall be fully liable for all damages resulting from a breach of this obligation, in particular but not limited to damages for delay.

5.4 The Goods and/or Work Products shall be delivered, and Services shall be provided during Customer's business hours unless otherwise requested by Customer.

5.5 Upon Delivery, Supplier (or its appointed carrier) shall provide Customer, together with a delivery note, any other required export and import documents not mentioned in Clause 5.3. In the event that Customer has approved partial delivery, such delivery note shall also include the outstanding balance remaining to be delivered.

5.6 Ownership (title) of the Goods and/or Work Products shall pass to Customer at Delivery, except if agreed otherwise in writing. To the extent that the Goods and/or Work Products contain Embedded Software, ownership (title) regarding such Embedded Software shall not be passed to Customer, however Customer and all users shall have a worldwide, irrevocable, perpetual, transferable, non-exclusive, royalty-free right to use the Embedded Software as an integral part of such Goods and/or Work Products or for servicing either of them. In the event the Embedded Software or any part thereof is owned by a third party, Supplier shall be responsible for obtaining the respective software licences necessary from the third party before Delivery to comply with its obligations under the Contract.

## **6. ACCEPTANCE**

6.1 Customer shall not be deemed to have accepted any Goods, Services and/or Work Products until it has had reasonable time to inspect or test them following Delivery or, in case a defect in the Goods, Services and/or Work Products was not reasonably detectable during the

inspection, within a reasonable time period after such defect has become apparent. Any obligation of Customer to inspect the Goods, Services and/or Work Products, shall be limited to quantity and type, and visible defects or damages resulting from transport.

6.2 The Parties may agree on a certain acceptance procedure, in which case acceptance shall be subject to Customer's explicit written acceptance statement. Supplier shall inform Customer in writing within a reasonable time period in advance when the Goods, Services and/or Work Products are ready for inspection, testing, or acceptance.

6.3 If any Goods, Services and/or Work Products do not comply with Clause 3 (Supplier's Responsibilities), or are otherwise not in conformity with the Contract, then, without limiting any other right or remedy that Customer may have under Clause 10 (Remedies), Customer may reject the Goods, Services and/or Work Products and/or request replacement by Goods, Services and/or Work Products conforming with the Contract or recover all payments made to Supplier.

## **7. DELAY**

If the Delivery of Goods and/or Work Products or the provision of Services does not comply with the agreed date(s) then, without prejudice to any other rights which it may have, Customer shall have the right to:

7.1 terminate the Contract in whole or in part;

7.2 refuse any subsequent delivery of the Goods and/or Work Products, or provision of Services which Supplier attempts to make;

7.3 recover from Supplier any expenditure reasonably incurred by Customer in obtaining the Goods, Services and/or Work Products in substitution from another supplier;

7.4 claim damages for any additional costs, loss or expenses incurred by Customer which are reasonably attributable to Supplier's failure to deliver the Goods and/or Work Products, or to provide the Services on the agreed date; and

7.5 claim additional compensation for liquidated damages as agreed in the Contract.

## **8. INSPECTION**

8.1 Supplier shall allow Customer and/or its authorised representatives during Supplier's business hours to (i) inspect the Goods and/or Work Products, and Supplier's manufacturing units upon providing reasonable notice, and/or request test samples of the respective Goods and/or Work Products, or any parts or materials thereof, and/or (ii) inspect the provision of the Services, and/or (iii) test the Goods and/or Work Products, or parts thereof.

8.2 If the results of such inspection or tests cause Customer to be of the opinion that the Goods, Services and/or Work Products do not conform or are unlikely to conform with the Contract or with any agreed specifications, including all specified material, workmanship and the like, documentation and quality requirements, or are not performed in accordance with generally accepted practices, procedures and standards of the respective industry, Customer shall inform Supplier and Supplier shall without undue delay take such action as is necessary to ensure conformity with the Contract. In addition Supplier shall carry out necessary additional inspection or testing at Supplier's own cost whereby Customer shall be entitled to attend.

8.3 Notwithstanding any inspection or tests by Customer, Supplier shall remain fully responsible for compliance of the Goods, Services and/or Work Products with the Contract. This applies whether or not Customer has exercised its right of inspection and/or testing and shall not limit Supplier's obligations under the Contract. For the avoidance of doubt, inspection or testing of Goods, Services and/or Work Products by Customer shall in no event exempt Supplier from or limit Supplier's warranties or liability in any way.

## 9. WARRANTY

9.1 Supplier warrants that the Goods, Services and/or Work Products:

9.1.1 comply with the Contract, including all specifications, specified material, workmanship and the like, documentation and quality requirements, or in absence thereof are provided or performed in accordance with generally accepted practices, procedures and standards of the respective industry, and are fit for the purposes for which goods, services or work products of the same description or the same or similar type would ordinarily be used, and keep the functionality and performance as expected by Customer according to Supplier's information, documentation and statements;

9.1.2 are fit for any particular purpose expressly or impliedly made known to Supplier in the Contract;

9.1.3 are new and unused at the date of Delivery;

9.1.4 are free from defects and rights of third parties;

9.1.5 possess the qualities which Supplier has held out to Customer as a sample or model; and

9.1.6 comply with Clause 12 (Compliance, Integrity).

9.2 Unless otherwise agreed in the Contract, the warranty period shall be twenty four (24) months from Delivery of Goods and/or Work Products, or the acceptance of the Services.

9.3 In case of non-compliance with the warranties provided under this Clause 9, Customer shall be entitled to enforce the remedies provided in Clause 10 (Remedies) hereunder.

## 10. REMEDIES

10.1 In case of breach of any 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 remedy it. If Supplier has not successfully remedied such breach within forty eight (48) hours of receiving such Customer notification or within such other remedy period agreed in writing between the Parties, Customer shall be entitled to any one or more of the following remedies at its own discretion and at Supplier's expense:

10.1.1 to give Supplier another opportunity to carry out any additional work necessary to ensure that the Contract is fulfilled;

10.1.2 to carry out (or to instruct a third party to carry out) any additional work necessary to make the Goods, Services and/or Work Products comply with the Contract;

10.1.3 to obtain prompt repair or replacement of the defective Goods, Services and/or Work Products by Goods, Services and/or Work Products conforming with the Contract without defects;

10.1.4 to refuse any further Goods, Services and/or Work Products, but without exemption from Supplier's liability for the defective Goods, Services and/or Work Products 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 Contract;

10.1.6 to terminate the Contract; in such event Customer shall have no obligation to compensate Supplier for the already provided but unpaid parts of the Goods, Services and/or Work Products, and Supplier shall be obliged to pay back to Customer any remuneration received from Customer for the Goods, Services and/or Work Products, and to take back the Goods and/or Work Products at Supplier's own cost and risk.

10.2 In the event that Clauses 10.1.1, 10.1.2 or 10.1.3 apply, the entire warranty period of Clause 9.2 shall be restarted.

10.3 The rights and remedies available to Customer and contained in the Contract are cumulative and are not exclusive of any rights or remedies available at law or in equity.

## 11. INTELLECTUAL PROPERTY

11.1 Supplier hereby grants Customer, or undertakes to procure that Customer is granted, a worldwide, irrevocable, perpetual, transferable, non-exclusive, royalty-free licence to use the Intellectual Property Rights in the Goods, including Embedded Software, if any.

11.2 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.

11.3 The Intellectual Property Rights in any Work Products created by or licensed to Supplier prior to the respective Contract or outside of such Contract, and any subsequent modifications to the same ("Pre-Existing Works") will remain vested in Supplier or the respective third party owner. 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, transferable, non-exclusive, royalty-free licence to use the Pre-Existing Works as part of such Work Products, including the right to further improve, develop, market, distribute, sublicense, exploit or otherwise use the Work Products containing such Pre-Existing Works. Supplier shall not be prevented or restricted from using its own know-how or its Pre-Existing Works in the course of providing the Services.

11.4 In the event the Embedded Software contains or uses Open Source Software, Supplier must specify and inform Customer in writing and prior to Delivery about all Open Source Software implemented into or used by the Embedded Software. In the event that Customer does not approve any Open Source Software components contained in or used by the Embedded Software, Supplier agrees to replace or substitute at its own cost the affected Open Source Software component(s) contained in or used by the Embedded Software with software of at least the same quality and functionality and which is accepted by Customer.

11.5 In the event that the Goods and/or Work Products (and/or the Embedded Software) delivered, or Services provided infringe any third party Intellectual Property Rights, Supplier shall, notwithstanding anything provided to the contrary or otherwise contained in the Contract, provide IPR Indemnification to Customer. The IPR Indemnification does not limit any further compensation rights of Customer. Supplier's obligation to indemnify Customer as provided under this Clause shall not apply if and to the extent the liability or damage was caused by Customer's own pre-existing Intellectual Property Rights contributed to, or implemented into the Goods, Services and/or Work Products.

11.6 If any infringement claim is made against Customer, Supplier shall at its cost, but at Customer's discretion (i) procure for Customer the right to continue using the Goods, Services and/or Work Products; (ii) modify the Goods, Services and/or Work Products so that they cease to be infringing; or (iii) replace the Goods, Services and/or Work Products so that they become non-infringing.

11.7 In the event Supplier cannot fulfil the measures requested by Customer under Clause 11.6, Customer shall be entitled to terminate the Contract and to reclaim all sums which Customer has paid to Supplier thereunder. In any event, Customer may claim compensation in accordance with Clause 11.5 for any costs, losses or damages incurred whatsoever.

## 12. COMPLIANCE, INTEGRITY

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

12.2 Supplier and its subcontractors must comply with the ABB Lists of Prohibited and Restricted Substances and with the reporting and other requirements regarding Conflict Minerals made available under [www.abb.com](http://www.abb.com) – Supplying – Material Compliance or otherwise and

shall provide Customer with respective documents, certificates and statements if requested. Any statement made by Supplier to Customer (whether directly or indirectly, e. g. where applicable via the ABB Supplier Registration and Pre-Qualification System) with regard to materials used for or in connection with the Goods, Services and/or Work Products will be deemed to be a representation under the Contract.

12.3 Supplier represents and warrants that it is knowledgeable with, and is and will remain in full compliance with all applicable trade and customs laws, regulations, instructions, and policies, including, but not limited to, securing all necessary clearance requirements, proofs of origin, export and import licenses and exemptions from, and making all proper filings with appropriate governmental bodies and/or disclosures relating to the provision of services, the release or transfer of goods, hardware, software and technology to non U.S. nationals in the U.S., or outside the U.S., the release or transfer of technology and software having U.S. content or derived from U.S. origin software or technology.

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

12.5 Both Parties warrant that each will not, directly or indirectly, and that each has no knowledge that the other Party or any third parties will, directly or indirectly, make any payment, gift or other commitment to its customers, to government officials or to agents, directors and employees of each Party, or any other party in a manner contrary to applicable laws (including but not limited to the U. S. Foreign Corrupt Practices Act and, where applicable, legislation enacted by member states and signatories implementing the OECD Convention Combating Bribery of Foreign Officials), and shall comply with all relevant laws, regulations, ordinances and rules regarding bribery and corruption. Nothing in the Contract shall render either Party or any of its Affiliates liable to reimburse the other for any such consideration given or promised.

12.6 Supplier herewith acknowledges and confirms that Supplier has received a copy of ABB's Code of Conduct and ABB's Supplier Code of Conduct or has been provided information on how to access both ABB Codes of Conduct online under [www.abb.com/Integrity](http://www.abb.com/Integrity). Supplier is obliged and agrees to perform its contractual obligations in accordance with both ABB Codes of Conduct, including but without limitation to all employment, health, safety and environmental requirements specified therein.

12.7 ABB has established the following reporting channels where Supplier and its employees may report suspected violations of applicable laws, policies or standards of conduct: Web portal: [www.abb.com/Integrity](http://www.abb.com/Integrity) – **Reporting Channels**; telephone and mail address: specified on this Web portal.

12.8 Any violation of an obligation contained in this Clause 12 shall be a material breach of the Contract. Either Party's material breach shall entitle the other Party to terminate the Contract with immediate effect and without prejudice to any further right or remedies under such Contract or applicable law.

12.9 Notwithstanding anything to the contrary contained in the Contract, Supplier shall, without any limitations, indemnify and hold harmless Customer from and against any liabilities, claim, proceeding, action, fine, loss, cost or damages arising out of or relating to any such violation of the above mentioned obligations and the termination of the Contract, or arising from export restrictions concealed by Supplier. With respect to export restrictions solely attributable to Customer's use

of the Goods, Services and/or Work Products, the now said commitment shall only apply to the extent Supplier has knowledge of or reasonably should have been aware of such use.

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

13.1 Supplier shall:

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

13.1.2 Apply appropriate safeguards, adequate to the type of Customer Data to be protected, against the unauthorised access or disclosure of Customer Data and protect such Customer Data in accordance with the generally accepted standards of protection in the related industry, or in the same manner and to the same degree that it protects its own confidential and proprietary information – whichever standard is higher. 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 terms substantially similar hereto or, where applicable, are required to comply with codes of professional conduct ensuring confidentiality of such information;

13.1.3 Not (i) use Customer Data for any other purposes than for providing the Goods, Services and/or Work Products, or (ii) reproduce the Customer Data in whole or in part in any form except as may be required by the respective contractual documents, or (iii) disclose Customer Data to any third party, except to Permitted Additional Recipients or with the prior written consent of Customer;

13.1.4 Install and update at its own costs required adequate virus protection software and operating system security patches for all computers and software utilized in connection with providing the Goods, Services and/or Work Products;

13.1.5 Inform Customer without delay about suspicion of breaches of data security or other serious incidents or irregularities regarding any Customer Data.

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

13.3 In case the type of Customer Data affected is particularly sensitive and therefore, according to Customer's opinion, requires a separate confidentiality and non-disclosure agreement, Supplier agrees to enter into such agreement. The same applies with regard to data privacy topics which are not covered by this Clause 13 and which may require a separate data processing agreement according to applicable laws and regulations.

13.4 The obligations under this Clause 13 exist for an indefinite period of time and therefore shall survive the expiration or termination of the Contract for any reason.



#### **14. LIABILITY AND INDEMNITY**

14.1 Without prejudice to applicable mandatory law or unless otherwise agreed between the Parties, Supplier shall compensate/indemnify Customer for/from all damages and losses in connection with the Goods, Services and/or Work Products (i) for Supplier's breaches of the Contract and (ii) for any claim made by a third party (including employees of Supplier) against Customer in connection with the Goods, Services and/or Work Products, except for IPR Indemnification for which Clause 11 (Intellectual Property) exclusively applies, and in all cases to the extent that the respective liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods, Services and/or Work Products provided by Supplier and/or its subcontractors. Upon Customer's request Supplier shall defend Customer against any third party claims.

14.2 Supplier shall be responsible for the control and management of all of its employees, its suppliers and/or subcontractors, and it shall be responsible for the acts, defaults, negligence or obligations of any of its employees, suppliers and/or subcontractors, its agents, servants or workmen as fully as if they were the acts, defaults, negligence or obligations of Supplier.

14.3 The provisions of this Clause 14 shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any substituted or replacement Goods, Services and/or Work Products provided by Supplier to Customer.

14.4 Supplier shall maintain in force, and upon request provide evidence of, adequate liability insurance and statutory worker's compensation/employer's liability insurance with reputable and financially sound insurers. Nothing contained in this Clause 14 shall relieve Supplier from any of its contractual or other legal liabilities. The insured amount cannot be considered nor construed as limitation of liability.

14.5 Customer reserves the right to set off any claims under a Contract against any amounts owed to Supplier.

#### **15. TERM AND TERMINATION**

15.1 A Contract between the Parties may be terminated for convenience in whole or in part by Customer upon giving Supplier thirty (30) calendar days written notice. In such event Customer shall pay to Supplier the value of the already delivered but unpaid parts of the Goods, Services and/or Work Products provided and proven direct costs reasonably incurred by Supplier for the not yet provided and unpaid Goods, Services and/or Work Products, however in no event more than the agreed price for the Goods, Services and/or Work Products under the respective Contract. No further compensation shall be due to Supplier. Compensation for any expenditures made with regard to Goods, Services and/or Work Products not yet provided shall be expressly excluded.

15.2 In the event of Supplier's breach of the Contract, Customer shall be entitled to terminate the Contract if Supplier fails to take adequate action to remedy a breach within 48 hours as requested by Customer in accordance with Clause 10.1. In such event, Customer shall have no obligation to compensate Supplier for the already delivered but unpaid parts of the Goods, Services and/or Work Products provided and Supplier shall be obliged to pay back to Customer any remuneration received from Customer for the Goods, Services and/or Work Products and to take back the Goods and/or Work Products at its (Supplier's) own cost and risk.

15.3 Customer shall have the right to terminate the Contract with immediate effect forthwith by notice in writing to Supplier in the event that an interim order is applied for or made, or a voluntary arrangement approved, or a petition for a bankruptcy order is presented or a bankruptcy order is made against Supplier or any circumstances arise which entitle the court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order or other similar or equivalent action is taken against or by Supplier by reason of its insolvency or in consequence of debt.

15.4 Upon termination Supplier shall immediately and at Supplier's expense safely return to Customer all respective Customer property (including any Customer Data, documentation, and retransfer/transfer of applicable Intellectual Property) and Customer information then in Supplier's possession or under Supplier's control and provide Customer with the complete information and documentation about the already supplied Goods, Services and/or Work Products or the respective parts thereof.

#### **16. FORCE MAJEURE**

16.1 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". For clarification, 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 reasonable control of the affected Party, and for which the affected Party is not responsible, provided such event prevents the affected Party from performing its obligations under 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.

16.2 If an event of Force Majeure occurs which exceeds thirty (30) calendar days, 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.

#### **17. ASSIGNMENT AND SUBCONTRACTING**

17.1 Supplier shall neither assign, nor subcontract, transfer, nor encumber the Contract, nor any parts thereof (including any monetary receivables from Customer) without prior written approval of Customer.

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

#### **18. 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 as stated in the Contract or to such other address as such Party may have notified in writing to the other for such purposes. E-mail and fax 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 the Parties.

#### **19. WAIVERS**

Failure to enforce or exercise, at any time or for any period, any term of the 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.

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

20.1 The Contract (including, but not limited to the ABB GTC/Goods and/or Services) 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.

20.2 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 Contract, including any question regarding its existence, validity or termination or the legal relationships established thereby, which cannot be settled amicably, shall be submitted to the jurisdiction of the competent courts at Customer's place of registration, unless other courts or arbitration are agreed in writing between the Parties.

20.3 For cross border dispute resolution matters whereby Customer and Supplier are registered in different countries, unless agreed otherwise in writing between the Parties, any dispute or difference arising out of or in connection with the Contract, including any question regarding its

existence, validity or termination or the legal relationships established thereby, which cannot be settled amicably, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The place of arbitration shall be the location where 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.

20.4 In case of any dispute, the defeated Party shall reimburse the succeeding Party for attorney's fees and other costs reasonably incurred in connection with the dispute.

## 21. SEVERABILITY

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

## 22. SURVIVAL

22.1 Provisions of the ABB GTC/Goods and/or Services 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.

22.2 The obligations set forth in Clauses 9 (Warranty), 10 (Remedies), 11 (Intellectual Property), 13 (Confidentiality, Data Security, Data Protection) and 14 (Liability and Indemnity) shall survive termination.

## 23. ENTIRETY

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

## 24. RELATIONSHIP OF PARTIES

24.1 The relationship of the Parties is that of independent parties dealing at arm's length and nothing in the Contract 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.

24.2 It is expressly agreed that the Contract does not imply any employment relationship between Customer and Supplier, or between Customer and Supplier's employees assigned to the execution of the Contract. Customer shall remain free of any direct or indirect responsibility or liability for labour, social security or taxes with respect to Supplier and its employees assigned to the provision of the Goods, Services and/or Work Products under the Contract.

## 25. 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 Contract.

## 26. TRACEABILITY OF FINANCIAL FLOWS FOR PUBLIC PROCUREMENT

a) Supplier – in the capacity of sub-contractor/sub-supplier/sub-party of Customer within the main Contract – assumes, where applicable, all the obligations specified in art. 3 of the Law nr. 136/2010, as modified by the Law nr. 217/2010.

b) In particular, in order to ensure the traceability of financial flows aimed to prevent criminal infiltration, Supplier must use, for the financial movements associated to the activities of the Contract, one or more bank or post accounts opened at banks or at the Poste Italiane S.p.A. company dedicated, even not exclusively, to public jobs.

c) Any financial movement associated to the activities of the Contract shall have to be performed exclusively by means of bank or mail transfer, or through Ri.Ba. (Electronic Collection Order).

d) Any financial movement associated to the activities of the Contract shall have to report: the relevant tender identification code (CIG) and, where envisaged, the associated project unique code (CUP). Supplier undertakes to indicate the CIG (and, where envisaged, the CUP) in the invoices it shall issue to Customer.

e) Supplier is obliged to transmit to Customer the identification details of the above mentioned dedicated bank account within 10 days from the stipulation of the Contract and also, within the same term, the personal details and the tax code of the individuals authorised to operate on it. Supplier shall also provide to promptly communicate any change concerning the transmitted data.

f) If the credits of Supplier deriving from the Contract, following the written approval of Customer are subject to transfer to third parties, the above mentioned obligations shall also have to be fulfilled by the transferee. For this purpose Supplier undertakes, by also promising the deed of the third party, to make sure that the transferee assumes the above mentioned obligations.

g) The infringement by Supplier of one or more provisions of the Law nr. 136/2010, as modified by the Law nr. 217/2010, shall legitimate Customer to declare the resolution by right of the Contract.

h) Under penalty to make the Contract null and void, Supplier undertakes to add to the contracts with any of its sub-contractors, sub-suppliers or sub-parties, previously authorised in writing by Customer, a similar clause with which each one of them assumes all the obligations concerning the traceability of financial flows as per the above mentioned article 3 of the Law nr. 136/2010, as modified by the Law nr. 217/2010.

i) Supplier, in the capacity of sub-contractor/sub-supplier/sub-party of Customer, undertakes to give immediate notice to the contacting party associated to the CIG communicated by Customer and to the competent Prefecture – Territorial Government Office – of the failure of its counterpart to comply with financial traceability obligations.

Supplier's signature:

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For the purposes and to the effects of article 1341 of the Italian Civil Code, Supplier specifically accepts and approves the following Clauses:

Clause 2 – Application;

Clause 3 – Supplier's Responsibilities;

Clause 4 – Customer's Responsibilities;

Clause 6 – Acceptance;

Clause 8 – Inspection;

Clause 10 – Remedies;

Clause 11 – Intellectual Property;

Clause 12 – Compliance, Integrity;

Clause 14 – Liability and Indemnity;

Clause 15 – Term and Termination;

Clause 16 – Force Majeure;

Clause 17 – Assignment and Subcontracting;

Clause 20 – Governing Law and Dispute Settlement.

Supplier's signature:

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