General Conditions for the Generation of Software

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0 Subject Matter of the Contract

Subject matter of this contract shall be the planning, generation and delivery of software for the areas of application as defined in the specification to be pre- pared in the planning phase (Clause 1).

1 Planning/Consulting

1.1 During the planning phase, Purchaser shall make use of the services of the Contractor in order to make the necessary preparations for the data processing application and the corresponding software generation. Purpose of the planning and consulting services to be provided by the Contractor shall be the development of a specification to be prepared on the basis of the facts and requirements to be established in ongoing close cooperation with the Purchaser during the planning phase. This specification shall form the basis for the subsequent generation of software (Clause 2) – herein: the "Specification".

1.2 During the planning phase, Purchaser shall provide the Contractor with the necessary information about the as-is condition in the envisaged application areas, objectives and priorities as regards business policy and process engineering, and about all other targets and standards within Purchaser's sphere which are required for the preparation of the Specification. To this end, there shall be a direct and close coordination between services provided by the Contractor and concerns, proposals and target standards of the Purchaser throughout the entire planning phase. Purchaser shall therefore be completely integrated in the planning phase and thus be given the opportunity to influence the Specification by his own contributions. Contractor shall provide the Purchaser with continuous advice and support as regards the determination of information substantial for the as-is and target conditions.

1.3 Contractor shall analyze, evaluate and document the needs of the Purchaser. The results shall be discussed with the Purchaser. The final formulation of the results obtained by coordination between Purchaser and Contractor shall be signed by all parties to document their agreement. The Specification shall comprise a definition of procedures by way of a description of functions, tasks, interfaces and of the interaction of functions as well as of the items of information required, and to be generated, by those functions. The final version of the Specification shall be signed by the parties to the contract and shall be the binding basis for the generation of the software. Because of the permanent involvement of the Purchaser in the planning phase and Purchaser's influence on the written version of the Specification, an acceptance within the meaning of § 640 German Civil Code (BGB) shall not be required. The contents of the Specification shall be regarded as guaranteeing specific features only to the extent as this is expressly specified in the final written version.

1.4 If, during the planning phase, Contractor recognizes that the planned configuration needs to be modified based on the facts, requirements and software features which have been worked out by then, Contractor shall notify the Purchaser accordingly within a reasonable period of time and submit alternative proposals. Purchaser shall without undue delay decide on possible modifications which may result from such indications for the preparation and contents of the Specification.

1.5 Start and expected duration of the planning phase as well as number and qualification of staff to be continuously employed by the Contractor primarily for this project, shall result from the conceptual part of the contract. Contractor shall appoint a contact person, who shall be responsible for rendering binding information, and make available qualified staff for co- operation with the Purchaser. The parties to the contract are aware of the fact that an intense involvement of the Purchaser in the preparation of the Specification is necessary for a fruitful cooperation during the planning phase.

1.6 During the planning phase and within a period of four weeks after signing of the Specification by both parties, this contract may be terminated by either party in writing by giving one week's notice; upon such termination, Contractor shall be paid the contractually agreed remuneration for his work during the planning phase.

1.7 Any industrial property rights that may arise within the scope of the planning phase or in connection with the Specification shall to their full extent remain with the Contractor.

2 Generation of the Software

2.1 Unless the contract is terminated in accordance with Clause 1.6, Contractor shall generate the software for the intended application area on the basis of the Specification.

2.2 Without prejudice to any requirements agreed upon for the software to be generated (herein: the "Software"), such software shall meet prior art and comply with all applicable legal provisions, recognized rules of software engineering and VDE, DIN and IEC regulations. Explanations and descriptions, e.g. in the Specification, shall not be considered as a guarantee (in particular not as a guarantee of specific properties – "*Beschaffenheitsgarantie*")).

2.3 Within the scope of the software generation phase, Contractor shall perform all further programming, in particular encoding, tests and integration. Contractor shall inform the Purchaser of the current state of programming work and the observance of requirements for the Software at appropriate regular intervals. If delays or the need for modifications become obvious, these shall be notified to the Purchaser within a reasonable period of time. The provisions as specified in Clause 1.4 shall apply accordingly.

2.4 Purchaser shall also during the software generation phase provide the Contractor within a reasonable period of time with all items of information which the Contractor needs in order to provide the services according to contract.

2.5 To the extent that Software is provided to the Purchaser for which the Contractor has only derived rights to use (third party software), the conditions of use agreed between the Contractor and its licensor shall apply with priority. To the extent that the Purchaser is provided with open source Software, the conditions of use underlying the open source Software shall apply with priority. Upon request, the Contractor shall provide the Purchaser with the source code if the provision of the source code is provided for as mandatory as per the conditions of use. The Contractor shall point out in the contract documents if third party software or open source Software and pertaining conditions of use exist and make the conditions of use available if so requested.

3 Project Representatives, Project Handling

3.1 If no further agreement has been made in individual cases, the following shall apply: Each party to the contract shall appoint project representatives who shall be responsible for the generation of the Software ("Project Representatives") and who shall be authorized to make binding statements in all matters relating to the project. Each party to the

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contract shall make provisions for representation in the case of the absence of the Project Representatives. The Project Representatives shall monitor and coordinate the project work on an ongoing basis and inform each other of the progress made in regular meetings. They shall make the necessary arrangements in writing.

3.2 Purchaser shall be entitled to have himself informed of the progress made in the generation of the Software during the regular working hours, upon consultation with the Contractor who shall submit documents and work results or intermediate results.

4 Subsequent Modifications

4.1 If, during the course of software generation, technical modifications are deemed appropriate or necessary by the Purchaser, he shall without undue delay notify the Contractor thereof. In this case, the parties shall agree on the resultant modifications to the content/conditions of the contract and the contract performance. If no agreement is reached, the originally agreed arrangements shall remain valid.

4.2 If deadlines or the contents/scope of the Software to be generated are modified by mutual agreement after signing of the contract, each party may request a conjoint adjustment of remuneration and time schedule. In this connection, the valuation standards as specified and used as a basis for the services of the Contractor upon signing of the contract shall apply. Purchaser shall not be entitled to order modifications unilaterally.

5 Remuneration

5.1 The remuneration to which the Contractor is entitled shall be regulated in the price section of the contract. All mentioned prices/rates shall apply plus statutory value-added tax as valid at the date the service is rendered.

5.2 Costs of deliveries and services to be paid on the basis of the inputs involved shall be remunerated according to the "Cost rates for input-based services" as valid at the time of rendering such service. These are attached to the contract as an annex.

5.3 In the case of accidental loss of his services or of parts thereof prior to acceptance, Contractor shall be entitled to a remuneration which corresponds to the amount of the services rendered by then.

5.4 Should the due dates for payment be exceeded, the legal consequences of delay shall become effective without any notice being necessary. Without prejudice to any other or further rights or claims, interest on defaulted payment shall be charged at the rate (in per cent) being the sum of 8 plus the amount of the then actual base rate under § 247 BGB (German Civil Code).

6 Delay

6.1 In the case of delays in performance by the Contractor for reasons for which Contractor is responsible ("delay"), the Purchaser, who demonstrably suffered a loss from such delay, may claim - after lapse of a reasonable grace period granted to the Contractor - as liquidated damages for each full week in delay the amount of 0.5 %, up to a maximum of 5% of that part of the total services which cannot be taken into operational use as intended due to unpunctual completion/performance.

6.2 Purchaser's claims for damages due to delayed performance as well as claims for damages in lieu of performance exceeding the limits specified 6.1 above, shall be excluded in all cases of delayed performance, even upon expiry of an additional period of time granted to the Contractor. This shall not apply in cases of mandatory liability based on intent, gross negligence, or due to injury of life, body or health. Cancellation of the contract by the Purchaser based on statute shall be limited to cases

where the Contractor is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser.

6.3 Times set shall also be extended accordingly where the non-observance of dates is due to other circumstances for which Contractor is not responsible.

6.4 Upon Contractor's request, Purchaser shall declare within a reasonable period of time whether he cancels the contract due to delayed performance or insist on the rendering of the services under the contract.

7 Acceptance

7.1 To the extent the services are work contract, the software generated shall be subject to acceptance.

7.2 Contractor shall notify the Purchaser in writing of the completion and readiness for acceptance of his services.

7.3 Conditions, procedure and duration of acceptance shall be defined in the Specification.

7.4 Partial acceptance may be agreed upon in the Specification for quantifiable partial services, which can be defined by value.

7.5 Any acceptance or partial acceptance should be recorded in an acceptance report. After successful completion of acceptance, acceptance shall be confirmed by the Purchaser (regularily by countersigning the acceptance report). The acceptance fiction according to § 640 para. 2 sentence 1 BGB (German Civil Code) shall only be prevented by Purchaser if he refuses acceptance within the specified period of time, naming a defect which is essential. In terms of completion as a prerequisite for this acceptance fiction it is sufficient if ABB has performed the services even if final documentation (if owed at all) is not yet available; this does not apply if such documentation is of considerable importance for the use of the software. In case Purchaser starts using – if agreed: after a test phase - the subject matter of the services. Software generation shall also be deemed completed 14 days after written notification of its readiness for acceptance by the Contractor, if acceptance is delayed for reasons outside the Contractor's sphere of responsibility; this shall apply to partial acceptance accordingly.

7.6 For the duration of measures for correcting defects, the acceptance test shall be deemed as being interrupted. Contractor shall correct defects free of charge within a reasonable period of time ("rework") and inform the Purchaser of the completion of such rework. Acceptance will then be performed again. Insignificant defects shall not justify refusal of acceptance.

7.7 If Contractor is unable to correct defects despite a reasonable additional period of time granted by the Purchaser under the threat of subsequent refusal of the service, the Purchaser shall be entitled to cancel the generation phase (Clause 2).

8 Defects as to Quality

Contractor shall be liable for defects as to quality as follows:

8.1 Contractor warrants that the Software is free from defects as to quality which would exclude or impair its qualification for the contractually in- tended use. Purchaser is aware of the fact that – according to the state of the art – it is not possible to generate software which is completely free from defects.

Without prejudice to Clause 8.2, Contractor shall correct within a reasonable period of time all reproducible software defects of which he is

notified by the Purchaser and for which he is responsible. Place for Contractor to supplement its performance ("*Nacherfüllung*") shall be Contractor's place of business. Purchaser shall give the Contractor written notice of defects as to quality without undue delay. Purchaser shall describe any such defects as to quality as accurately as possible. At Contractor's option, rework shall either be performed by correction of the defect, by delivery of a new software version or by Contractor's demonstration of how to avoid the consequences of such defect. A new software version shall be implemented by the Purchaser, unless this would result in unreasonable adaptation and conversion problems on his part.

8.2 Claims for repair or replacement are subject to a statute of limitations of 12 months calculated from the start of the statutory statute of limitations; the same shall apply mutatis mutandis in the case of rescission and reduction. This shall not apply where:

- insofar as the law prescribes longer periods are prescribed according to Sec. 438 para. 1 No. 2 (buildings and things used for buildings) and Sec. 634a para. 1 No. 2 (defects of a building) German Civil Code ("*Bürgerliches Gesetzbuch*"),

- in case of intent,

- in case of fraudulent concealment of the defect, as well as

- in the event of non-compliance with a quality guarantee.

Claims for reimbursement of expenses by Purchaser pursuant to Sec. 445a of the German Civil Code (seller's recourse) with regard to supplies being considered as par of a sale contract (e.g. licensing of standard software without time limit) – hereinafter: "Subject Matter of Supplies" - shall also become time-barred 12 months calculated from the start of the statutory statute of limitations, provided that this shall not apply in case Purchaser resells the Subject Matter of Supplies and the last customer in the supply chain (in respect of the supplies) is a consumer.

The legal provisions regarding suspension of expiration ("*Ablaufhemmung*"), suspension ("*Hemmung*") and recommencement of limitation periods remain unaffected.

8.3 In the case of claims for defect as to quality, the Purchaser may withhold payments to an extent which is reasonable in relation to the defect as to quality occurred. Unjustified notifications of defect as to quality shall entitle the Contractor to have its expenses reimbursed by the Purchaser.

8.4 The Contractor shall first be given the opportunity to supplement its performance ("*Nacherfüllung*") within a reasonable period of time. If supplementary performance is unsuccessful, Purchaser - without prejudice to any claims for damages in accordance with Clause 10 (Liability) - shall be entitled to cancel the "Software Generation" section of contract (Clause 2) or to reduce the remuneration approportionately. Supplementary performance shall only be considered as having failed ("*Fehlschlagen*") if despite an additional period of time granted in writing by the Purchaser a second attempt by the Contractor to supplement its performance so as to enable the use of the Software by the Purchaser substantially in line with the contract has likewise been unsuccessful.

8.5 Purchaser shall have no claim with respect to expenses incurred in the course of supplementary performance to the extent that expenses are increased because the subject-matter of the performance was subsequently brought to another location than the Purchaser's branch office, unless doing so complies with the intended use of the Software. This shall apply mutatis mutandis to claims by Purchaser for reimbursement of expenses pursuant to Sec. 445a of the German Civil Code (seller's recourse), with regard to Subject Matter of Supplies provided that this shall not apply in case Purchaser resells the supplies and the last customer in the supply chain (in respect of the supplies) is a consumer.

8.6 Furthermore, the provisions of Clause 10 (Liability) shall apply in respect of claims of damages. Any other claims of the Purchaser against the Contractor or its agents or any such claims exceeding the claims provided for in this Clause 8, based on a defect as to quality, shall be excluded.

8.7 Services beyond the supplementary performance (e.g. servicing and maintenance) shall be the subject of contracts to be concluded separately.

9 Industrial Property Rights and Copyrights; Defects in Title

9.1 Unless otherwise agreed upon, Contractor shall provide the services hereunder and the Software (in the following collectively referred to as "Software") without infringement of third parties' industrial property rights and copyrights (in the following referred to as "IPR") only with respect to the country of the place of destination. If a third party asserts a justified claim against the Purchaser based on an infringement of IPR by Software provided by the Contractor and then used in conformity with the contract, Contractor shall be liable to the Purchaser within the time period as specified in Clause 8.2 as follows:

a. The Contractor shall, at his option and at his expense, either acquire the right to use the IPR with respect to the Software concerned, or modify the Software in such a way that they no longer infringe the IPR in question, or replace it. If this is unreasonable to the Contractor, the Purchaser shall be entitled to make use of the right of cancellation or the right to demand a reduction of the remuneration, each as provided by law.

b. Contractor's liability to pay damages shall be governed by Clause 10 (Liability).

c. The aforementioned obligations of the Contractor shall only apply if the Purchaser (i) immediately notifies the Contractor in writing of any such claim asserted by third parties, (ii) does not concede the existence of an infringement, and (iii) leaves any defensive measures and settlement negotiations to the discretion of the Contractor. If the Purchaser discontinues using the Software in order to minimize damage or for other good reasons, he shall be obligated to point out to such third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.

9.2 Claims of the Purchaser shall be excluded if he himself is responsible for the infringement of an IPR.

9.3 Claims of the Purchaser shall also be excluded if the infringement of the IPR is caused by specifications made by the Purchaser (including the Specification accepted by Purchaser), by an application not foreseeable by the Contractor, or if it is caused by a modification of the Software by the Purchaser or by its use together with products not supplied by the Contractor.

9.4 In addition, with respect to claims by Purchaser pursuant to No. 1 a) above, Article 8 Nos. 3, 4 and 5 shall apply mutatis mutandis in the event of an infringement of an IPR.

9.5 In the case of other defects in title, the provisions of Clause 8 (Defects as to Quality) shall apply accordingly.

9.6 Any other claims of the Purchaser against the Contractor or its agents or any such claims exceeding the claims provided for in this Clause 9, based on a defect as to quality, shall be excluded.

10 Liability

Irrespective of the legal grounds, Contractor shall only be liable under the German Product Liability Act ("*Produkthaftungsgesetz*"), in cases of intent and gross negligence, injury of life, body or health, as well as for a breach of a condition which goes to the root of the contract ("*wesentliche Vertragspflichtverletzung*") or if Contractor fraudulently conceals a defect as to quality ("*Arglistiges Verschweigen eines Mangels*"). However, claims for damages arising from a breach of a condition which goes to the root of the contract shall be limited to the foreseeable damage which is intrinsic to the contract, unless caused by intent or gross negligence or based on liability for injury of life, body or health. The above provision does not imply a change in the burden of proof to the detriment of the Purchaser.

10.2 In no case shall the Contractor be liable for loss of revenue, loss of use, loss of production, costs of capital or costs connected with interruption of operation. Moreover, Contractor shall in no case be liable for any indirect or consequential damages or losses.

10.3 Contractor shall be liable for the recovery of data only if the Purchaser has made sure that such data can be recovered from machine-readable data material by reasonable efforts of work and time.

10.4 Circumstances for which the Contractor may not be held responsible also include difficulties in procuring the supplies and services required for the services of the Contractor.

11 Secrecy

11.1 Contractor undertakes not to disclose to third parties any information, business transactions or documents of the Purchaser, which come to his or his employees' knowledge, or make such information, business trans- actions and documents in any manner available to third parties.

11.2 The obligation to maintain secrecy shall not apply if such information

- is in the public domain;

- had already had come to the knowledge of the Contractor when received;

- has been made available to the Contractor by third parties without obligation to maintain secrecy;

- must be made available to third parties for the fulfillment of contractual obligations (e.g. subcontractors) and these were obligated to maintain secrecy.

11.3 The provisions as stated above shall apply accordingly to the Purchaser and his employees.

12 Rights of Use

12.1 Irrespective of the obligation to permit Purchaser the use of the Software, all rights to the know-how and any of its results capable of being protected (inventions, copyrights, etc.) shall remain with the Contractor.

12.2 Upon payment of the agreed remuneration, Purchaser shall be granted a non-exclusive and non-transferable right to use the Software for the project as regulated in this contract. The rights to use the Software shall therefore be restricted to its use at the locations as specified in the contract.

This right of use shall also include the relevant documentation.

12.3 Purchaser shall make copies of the Software for backup and archiving purposes only. No copies shall be made of the supplied documentation.

12.4 The Software shall be handed over to third parties or rights of use be assigned to third parties only upon prior written approval of the Contractor.

12.5 Processing of the Software, in particular by means of modifications, translations or its combination with other programs, shall be admissible only upon express written approval of the Contractor.

12.6 Copyright notes of the Contractor on the Software shall not be removed and shall also be used on copies and processed versions.

12.7 Purchaser undertakes (a) to keep the Software including the documentation in safe custody in order to exclude any misuse, and (b) to keep the Software confidential vis-à-vis third parties, and to make sure that employees, etc. to whom the Software is made available are likewise bound by the obligations to maintain secrecy / restrictions for use as provided hereunder.

12.8 Contractor shall be entitled to make unrestricted use of the know-how acquired in connection with the execution of this contract for his own business activities.

13 Employees of Contractor

Purchaser during the term of the contract and a period of two (2) years thereafter shall refrain from employing Contractor's staff entrusted with the performance of the project work. In the case of violation of this clause, Purchaser shall pay to the Contractor liquidated damages in the amount of EUR 50,000.00 per employee so employed by Purchaser. The Parties to the contract may prove that higher damages or, as the case may be, no damage or lower damages have been incurred.

14 Export Control

Contractor proceeds on the assumption that the Software shall not be exported or re-exported by the Purchaser. Contractor, however, points out that the delivered software may, under certain circumstances, be subject to German or foreign export regulations. Contractor points out to the Purchaser that the relevant regulations must be complied with by Purchaser; any liability of the Contractor shall be excluded.

In order to comply with national and international foreign trade regulations/laws, the parties will support each other and provide all necessary documentation and information for export control purposes, such as relating to the registration of items to be exported: in export control lists or to the final destination and end use of the items. ABB shall not be obliged to perform its obligation under this contract in violation of any statutory or internal export control regulations. ABB shall have the right at any time to withdraw from the contract without incurring any liability for either party, if

- Purchaser, despite request, does not provide either any or sufficient enough information about the final destination and the end use of the goods;

- ABB obtains knowledge of an unintended end use after tendering or knowledge of any previously unknown person involved in the business and cannot perform the contract due to any export control or intragroup regulations;

- the items or services are intended for military end use, civil nuclear use or for use in connection with weapons of mass destruction or for missiles capable of delivering such weapons; substantive evidence shall be sufficient to prove this intent; or

- a possibly illegal or unlicensed export or an infringement of embargo rules cannot be fully ruled out.

15 Miscellaneous

15.1 If personal data must be processed by the Contractor within the scope of the software generation, Contractor shall observe the provisions under the German Federal Data Protection Act and other data protection regulations, and - insofar as the Purchaser is involved - coordinate necessary data protection measures with the Purchaser, and render it possible for the Purchaser to verify the observance of the agreed measures.

15.2 Modifications and supplements to this contract shall not take effect unless made in writing.

15.3 If a provision of this contract is invalid or unenforceable, this shall not affect the remaining provisions of this contract. Such invalid or unenforceable provision shall be replaced with a valid and enforceable provision which comes as close as possible to the economic purpose of the invalid or unenforceable one.

15.4 Purchaser reserves the right to assign this contract and all of its rights and obligations to another company of the ABB group without the requirement of obtaining Contractor's separate approval.

15.5 The contractual and non-contractual legal relationship between the parties shall be governed by German substantive law. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

15.6 Exclusive place of jurisdiction for all disputes directly or indirectly arising from this contractual relationship shall be Mannheim, Germany. However, the Contractor shall be entitled to institute legal proceedings at the place of Purchaser's domicile.

15.7 These Conditions shall apply to the exclusion of any conditions of Purchaser. This shall also apply if the Purchaser states that his order shall be subject to his own conditions only. Any other conditions and deviations from these Conditions shall not be binding unless agreed to by the Contractor in writing.

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