

# ABB GENERAL TERMS AND CONDITIONS

## FOR PURCHASE OF GOODS

### ABB GTC/GOODS (2014-1 ITALY)

**DATE:** April 1<sup>st</sup>, 2014

**FOR:** ABB Affiliates' purchases of tangible movable items (goods).

#### 1. DEFINITIONS AND INTERPRETATION

1.1 In this document

**“ABB GTC/Goods”:** means the present ABB General Terms and Conditions for Purchase of Goods (2014-1 Italy);

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

**“Contract”:** means Supplier's agreement to deliver the Goods to Customer, and Customer's acceptance of such Delivery of Goods under this ABB GTC/Goods, the Order and the documents attached to the Order;

**“Customer”:** means the purchasing ABB Affiliate ordering Goods from Supplier;

**“Delivery”:** means delivery completion of Goods by Supplier in accordance with INCOTERMS 2010 DAP unless otherwise specified in the Order;

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

**“Goods”:** means the tangible movable items to be delivered by Supplier under this ABB GTC/Goods and the related Order;

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

**“Open Source Software (OSS)”:** means 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”:** consists of Customer filling in the Order form with all required Customer purchasing information based upon this ABB GTC/Goods, and such respective documents, specifications, drawings and annexures expressly referred to in or attached by Customer to such Order;

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

**“Supplier”:** means the seller of the Goods such as the person, firm or company who accepts Customer's Order;

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

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

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

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

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

1.2.4 The use of any gender includes all genders.

#### 2. APPLICATION OF TERMS

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

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

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

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

#### 3. SUPPLIER'S RESPONSIBILITIES

3.1 Supplier shall deliver the Goods as provided below:

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 Order;

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

3.1.4 on the due date specified in the Order; and

3.1.5 in the quantity specified in the Order.

3.2 Supplier shall not substitute or modify any of the materials in the Goods or make any changes to the design of the Goods without Customer's prior written approval.

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

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 supplied; price (total amount invoiced); currency; tax or VAT amount; tax or VAT number; payment terms.

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

3.6 Customer may issue Variation Orders to Supplier to alter, amend, omit, add to, or otherwise change ordered Goods or parts thereof, and Supplier shall carry out such Variation Orders under the Order and/or ABB GTC/Goods. Agreed unit prices stated in the Order and/or otherwise agreed between Customer and Supplier shall apply.

3.7 In no event Supplier shall suspend the Delivery of any Goods to Customer.

#### 4. CUSTOMER'S RESPONSIBILITIES

4.1 In consideration of the Goods delivered by Supplier in accordance with the terms and conditions of the respective Order and the ABB GTC/Goods, Customer shall pay to Supplier the purchase price stated in the Order provided the invoice fulfils the requirements of Clause 3.4.

4.2 Customer reserves the right to set off such amount owed to Supplier, or withhold payment for Goods not provided in accordance with the Order and the ABB GTC/Goods.

#### 5. DELIVERY

5.1 The Goods shall be delivered in accordance with INCOTERMS 2010 DAP, to the point of delivery specified in the Order, or Customer's place of business if no other point of delivery has been specified by Customer.

5.2 Supplier shall ensure that each Delivery is accompanied by a delivery note, which shall contain the following minimum information (unless required otherwise by Customer): the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

5.3 The Goods shall be delivered during Customer's business operation hours unless otherwise requested by Customer.

5.4 Upon Delivery, Supplier (or its appointed carrier) shall provide Customer with such export documents as are necessary together with a delivery note.

5.5 Ownership (title) of the Goods shall pass to Customer at Delivery, except if otherwise expressly agreed. However, to the extent that the Goods 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, royalty-free right to use the Embedded Software as an integral part of such Goods or for servicing the Goods. 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 Order.

5.6 In the event the Embedded Software contains or uses Open Source Software, Supplier must fully 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 cannot approve any Open Source Software components contained in or used by the Embedded Software, Supplier agrees to replace or substitute the affected Open Source Software component(s) contained in or used by the Embedded Software.

5.7 Supplier shall invoice Customer upon Delivery in accordance with Clause 3.4, but such invoicing shall be conducted separately from despatch of the Goods to Customer.

#### 6. ACCEPTANCE OF GOODS

6.1 Customer shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following Delivery or, in the case of a defect in the Goods, until a reasonable time after such defect has become apparent.

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

#### 7. DELAYED DELIVERY

If Delivery of the Goods does not comply with the agreed delivery date(s) then, without prejudice to any other rights which it may have, Customer reserves the right to:

7.1 terminate the Contract in whole or in part;

7.2 refuse any subsequent delivery of the Goods which Supplier attempts to make;

7.3 recover from Supplier any expenditure reasonably incurred by Customer in obtaining the Goods 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 on the agreed delivery date; and

7.5 claim additional compensation for liquidated damages if such compensation right is expressly stated in the respective Order.

#### 8. INSPECTION OF GOODS

8.1 At any time prior to Delivery and during Supplier's business hours, Customer shall have the right at its cost to (i) inspect the Goods and Supplier's manufacturing units upon providing reasonable notice, and/or (ii) request test samples of the respective Goods, or any parts or materials thereof.

8.2 If the results of such inspection or test sampling cause Customer to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or with any specifications and/or patterns supplied or advised by Customer to Supplier, Customer shall inform Supplier and Supplier shall immediately take such action as is necessary to ensure conformity with the Order. In addition Supplier shall carry out such necessary additional inspection or testing at Supplier's own cost whereby Customer shall be entitled to be present and in attendance.

8.3 Notwithstanding any inspection or test sampling by Customer, Supplier shall remain fully responsible for the Goods compliance with the Order. This applies whether or not Customer has exercised its right of inspection and/or testing and shall not limit Supplier's obligations under the Order. For the avoidance of doubt, inspection or testing of Goods 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:

9.1.1 comply with all agreed specifications, including all specified material, workmanship and the like, documentation and quality requirements, or in absence thereof are fit for the purposes for which goods of the same description 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 Order and/or Order related documents;

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;

9.1.6 comply with Clause 12 (Compliance with Relevant Law).

9.2 The warranty period shall be twenty four (24) months from Delivery, or such other time period stated in the Order or otherwise expressly agreed in the Contract.

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

## 10. REMEDIES

10.1 In case of breach of warranty under Clause 9 (Warranty) or if Supplier otherwise fails to comply with any of the terms of the respective Order, Customer shall give notice in writing to Supplier of such breach of warranty and provide Supplier an opportunity to swiftly remedy it. If no Supplier action to remedy such breach has been taken within forty eight (48) hours of receiving such Customer notification, Customer shall be entitled to any one or more of the following remedies at its own discretion and at Supplier's own expense:

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

10.1.2 to carry out (or to instruct a third party to carry out) any additional work necessary to make the Goods comply with the Order;

10.1.3 to obtain prompt replacement of the defective Goods by Goods conforming with the Order without defects;

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

10.1.5 to claim such damages as may have been sustained by Customer as a result of Supplier's breaches of the respective Order;

10.1.6 to terminate the Contract in accordance with Clause 15.2.

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 ABB GTC/Goods are cumulative and are not exclusive of any rights or remedies available at law or in equity.

## 11. INTELLECTUAL PROPERTY

11.1 In the event that the Goods (and/or the Embedded Software) delivered by Supplier infringe any third party Intellectual Property Rights, Supplier shall, notwithstanding anything provided to the contrary or otherwise contained in this ABB GTC/Goods, the Order, or the Contract, provide IPR Indemnification to Customer. The IPR Indemnification applies whether or not Supplier may have been negligent or at fault and does not limit any further compensation rights of Customer. Supplier's obligation to 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 provided by Supplier.

11.2 If any infringement claim is made against Customer, Customer may without prejudice to its rights under Clause 11.1 also request at its discretion and at Supplier's cost that Supplier (i) procures for Customer the right to continue using the Goods; (ii) modifies the Goods so that they cease to be infringing; or (iii) replaces the Goods so that they become non-infringing.

11.3 In the event Supplier cannot fulfil Customer's above request, Customer shall be entitled to terminate the Order, to reclaim all sums which Customer has paid to Supplier under the Order and to claim compensation in accordance with Clause 11.1 and for any other costs, losses or damages incurred whatsoever.

## 12. COMPLIANCE WITH RELEVANT LAW

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

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

12.3 Either Party's material violation of any of the obligations contained in this Clause 12 (Compliance with Relevant Law) may be considered by the other Party to be a material breach of the respective contractual relationship for the sale of Goods to which this ABB GTC/Goods applies, and shall entitle such Party to terminate such contractual relationship with immediate effect and without prejudice to any further right or remedies under such contractual relationship or applicable law.

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

12.5 Supplier herewith acknowledges and confirms that it has received a copy of ABB's Code of Conduct and ABB's Supplier Code of Conduct or has been provided information on how to access the ABB Codes of Conduct online ([www.abb.com](http://www.abb.com) – Integrity – Code of Conduct). Supplier agrees to perform its contractual obligations under the ABB GTC/Goods and the respective contractual relationship with substantially similar standards of ethical behaviour as stated in the above mentioned ABB Codes of Conduct.

12.6 Supplier must comply with the ABB Lists of Prohibited and Restricted Substances and with the reporting and other requirements regarding Conflict Minerals (available under [www.abb.com](http://www.abb.com) – Supplying to ABB – Doing Business with ABB). 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 will be deemed to be a representation under the Contract.

12.7 Supplier represents and warrants that it is knowledgeable with, and is and will remain in full compliance with all applicable export and import laws, regulations, instructions, and policies, including, but not limited to, securing all necessary clearance requirements, 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.

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

12.9 Supplier shall indemnify and hold Customer harmless for all claims, demands, losses, damages, costs, fines, penalties, attorney's fees and all other expenses arising from export restrictions concealed by Supplier. With respect to export restrictions solely attributable to Customer's use of the Goods, the now said warranty shall only apply to the extent Supplier has knowledge of or reasonably should have been aware of such use.

12.10 Supplier must indicate the customs tariff numbers of the country of consignment for all Goods. For controlled Goods, the national export control numbers must be indicated and, if the Goods are subject to U.S. export regulations, ECCN or ITAR classifications. 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.

### 13. CONFIDENTIALITY AND DATA PROTECTION

13.1 Supplier is obliged to observe secrecy regarding any data or information acquired during the fulfilment of the Contract irrespective of whether such data or information relates to Customer, its Affiliates or their respective customers or suppliers ("Customer Data"). This includes in particular, but is not limited to, all technical or commercial know-how, drawings, specifications, inventions, processes or initiatives which are of a confidential nature. To safeguard this,

13.1.1 Supplier shall process or use Customer Data only in accordance with Customer's instructions and with all applicable laws and regulations; for the avoidance of doubt, processing in accordance with the Contract shall be considered to be an instruction from Customer;

13.1.2 Supplier shall not (i) use Customer Data for any other purposes than for providing the Goods, or (ii) reproduce Customer Data in whole or in part in any form except as may be required to fulfil its obligations under the Contract; (iii) disclose Customer Data nor grant access to such data to any third party without Customer's prior written consent; no third parties in the meaning of this provision are subcontractors approved by Customer;

13.1.3 Supplier shall take appropriate measures suited to the type of Customer Data to be protected (i) to prevent unauthorised persons from gaining access to data processing systems with which Customer Data are processed or used, (ii) to prevent data processing systems from being used without authorisation, (iii) to ensure that persons entitled to use a data processing system have access only to the data to which they have a right of access, and that Customer Data cannot be read, copied, modified or removed without authorisation in the course of processing or use and after storage, (iv) to ensure that Customer Data cannot be read, copied, modified or removed without authorisation during electronic transmission or transport, and that it is possible to monitor and establish to which bodies the transfer of Customer Data by means of data transmission facilities is envisaged, (v) to ensure that it is possible to monitor and establish whether and by whom Customer Data have been entered into data processing systems, modified or removed, (vi) to ensure that, in the case of commissioned processing of Customer Data, the data are processed strictly in accordance with the instructions of Customer, (vii) to ensure that Customer Data are protected from accidental or unlawful destruction or loss, (viii) to ensure that data collected for different purposes can be processed separately. Supplier shall document the implementation of the technical and organizational measures in detail and shall present this to Customer for review upon request. Where this review raises the need for amendments, these must be applied amicably;

13.1.4 Supplier shall ensure and prove that those members of its staff who may come into contact with Customer Data in the course of fulfilling their tasks are subject to the same obligation to confidentiality as applicable to Supplier. Supplier shall confirm this in writing upon Customer's request. Customer may verify compliance with the technical and organisational measures undertaken by Supplier any time upon reasonable notice;

13.1.5 The commissioning of subcontractors requires Customer's previous written consent. This applies also in those instances when one subcontractor is replaced by a subsequent one. The contracts awarded by Supplier to its subcontractors are to be formulated in such a manner that they meet the requirements regarding confidentiality and data protection agreed upon in the Contract. Supplier shall provide Customer with information on the essentials of such contracts and on the

measures implemented by the subcontractors to fulfil their obligations regarding confidentiality and data protection. If requested by Customer Supplier shall present its respective contractual documents for the former to examine. Supplier shall ensure that Customer has the same rights to monitor the subcontractors as Customer has to monitor Supplier. Subcommissions in the meaning of this provision do not include ancillary services ordered by Supplier from third parties which are not directly related to Customer, such as telecommunications services, maintenance and user support, cleaning, auditing or the disposal of data media. Even where ancillary services are taken from third parties, Supplier must however ensure confidentiality and undertake monitoring activities.

13.2 The obligation to confidentiality does not apply to such data (i) whose disclosure is required for the fulfilment of the Contract; (ii) which are publicly known at the time Supplier receives them or which subsequently become publicly known through no action of Supplier itself; (iii) which were already known to Supplier prior to its initial activity for Customer and for which no duty to observe secrecy applies; (iv) which is made accessible to Supplier by third parties and for which no duty to observe secrecy applies or (v) which Supplier is obliged to disclose by mandatory law or by legally binding instruction of a court of law or a public authority. Insofar as Supplier wishes to invoke one of the above exceptions, the burden of proof for the existence of the factual preconditions for such exception shall lie with Supplier.

13.3 Supplier shall not retain any Customer Data for longer than necessary to provide the Goods or than determined by Customer. Immediately after termination of the Contract or at any time on Customer's demand, Supplier shall, at the choice of Customer, immediately deliver to Customer all copies of such data provided by Customer to Supplier for the purposes of the Contract or received otherwise by Supplier while providing the Goods and/or delete securely all Customer Data from its database. Supplier shall certify to Customer that it has not retained any copies of Customer Data with a written confirmation of destruction. Such confirmation shall be signed by duly authorized signatories of Supplier.

13.4 With regard to any data or information belonging to Customer or its Affiliates 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 or being qualified as Personally Identifiable Information within the meaning of the applicable laws ("Personal Data"), Supplier will comply with all applicable data protection and privacy laws and regulations. In addition to the other stipulations in this Clause 13 the following applies:

13.4.1 Supplier shall not process Personal Data in or transfer Personal Data to a country with a level of data protection that is not at least equivalent with the level of data protection that applies within the country of origin of the Personal Data without Customer's prior written consent. Upon Customer's request and where required by applicable law, in particular if Customer or its Affiliates are located in Switzerland or in a country which is a Member State of the European Union (EU) or another signatory to the Agreement on the European Economic Area (EEA), Supplier agrees to enter into a separate data transfer agreement (EU Standard Contractual Clauses/Swiss Data Processing Agreement) with Customer and/or its Affiliates for the transfer of Personal Data to third countries.

13.4.2 Supplier shall inform Customer without delay about serious incidents arising in the course of normal operations, suspicions of breaches of data privacy or other irregularities regarding the processing of Customer's or its Affiliates' Personal Data. In such cases Supplier and Customer shall agree on the further handling of the Personal Data. Supplier shall inform Customer without delay about checks performed and measures taken by a supervisory authority. This also applies regarding investigations into administrative or criminal offences.

13.4.3 Supplier will comply with any request by Customer to access, correct, block or delete Personal Data insofar as Customer is obliged to such request by law.

13.4.4 In case the legislation of a country in which Supplier provides Goods to Customer or its Affiliates requires a contract governing data privacy topics which are not covered by this Clause 13, Supplier agrees to enter into such contract.

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

13.6 The obligation to Confidentiality and Data Protection exists for an indefinite period of time and therefore this Clause 13 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 all damages and losses in connection with the Goods whether or not Supplier may have been negligent or at fault (i) for Supplier's breaches of the terms of Contract, and (ii) for any claim, except for IPR Indemnification for which Clause 11 (Intellectual Property) applies, made by a third party (including employees of Supplier) against Customer in connection with the Goods and to the extent that the respective liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods delivered by Supplier and/or its sub-contractors. Upon Customer's request Supplier shall defend Customer against any third party claims.

14.2 Supplier shall be responsible for observance of all of its suppliers and/or sub-contractors, and it shall be responsible for the acts, defaults, negligence or obligations of any of its suppliers and/or sub-contractors, 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 (Liability and Indemnity) shall survive any performance, acceptance or payment pursuant to this ABB GTC/Goods and shall extend to any substituted or replacement Goods delivered by Supplier to Customer.

14.4 Unless otherwise expressly stated in the respective Order, 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 (Liability and Indemnity) 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 the Order against any amounts owed to Supplier.

#### **15. TERM AND TERMINATION OF ORDERS**

15.1 The respective contractual relationship established by an Order under this ABB GTC/Goods may be terminated for convenience in whole or in part by Customer upon giving Supplier thirty (30) calendar days written notice, unless otherwise expressly stated in the relevant Order. In such event Customer shall pay to Supplier the value of the already delivered but unpaid parts of the Goods and proven direct costs reasonably incurred by Supplier for the undelivered and unpaid parts of the Goods, however in no event more than the agreed purchase price for the Goods under the respective Order. No further compensation shall be due to Supplier.

15.2 In the event of Supplier's breach of the Contract, including a breach of warranty, Customer shall be entitled to terminate the respective Contract established by an Order under this ABB GTC/Goods if Supplier fails to take adequate and timely actions to remedy a breach as requested by Customer. In such event, Customer shall have no obligation to compensate Supplier for the already delivered but unpaid parts of the Goods and Supplier shall be obliged to pay back to Customer any remuneration received from Customer for the Goods and take back the Goods at Supplier's own cost and risk.

15.3 Upon termination Supplier shall immediately and at Supplier's expense safely return to Customer all respective Customer property (including any documentation, data, and 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 delivered parts of the Goods.

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

16.1 Neither Party shall be liable for any delay in performing or for failure to perform its obligations under a respective Order if the delay or failure results from an event of "Force Majeure." For clarification, Force Majeure means an event that was not foreseeable by the affected Party at the time of execution of the respective Order, is unavoidable and outside the control of the affected Party, and for which the affected Party is not responsible, provided such event prevents the affected Party from performing the respective Order despite all reasonable efforts, and the affected Party provides notice to the other Party within five (5) calendar days from occurrence 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 Order 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 SUB-CONTRACTING**

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

17.2 Customer may at any time assign, transfer, encumber, sub-contract or deal in any other manner with all or any of its rights or obligations under the respective Order and/or ABB GTC/Goods to any of its own ABB 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 Order 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 duly authorised representatives of the Parties.

#### **19. WAIVERS**

Failure to enforce or exercise, at any time or for any period, any term of the ABB GTC/Goods or an Order does not constitute, and shall not be construed as, a waiver of such term and shall not affect the right later to enforce such term or any other term herein contained.

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

20.1 The respective Order and/or ABB GTC/Goods 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 respective Order and/or ABB GTC/Goods, including any question regarding its existence, validity or termination or the legal relationships established by the respective Order and/or ABB GTC/Goods, which cannot be settled amicably, shall be submitted to the jurisdiction of the competent courts of Customer's 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 respective Order and/or ABB GTC/Goods, including any question regarding its existence, validity or termination or the legal relationships established by the respective Order and/or ABB GTC/Goods, 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.

**21. SEVERABILITY**

The invalidity or unenforceability of any term or of any right arising pursuant to the ABB GTC/Goods and/or the Order shall not adversely affect the validity or enforceability of the remaining terms and rights, and the ABB GTC/Goods and/or the Order 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 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 and Data Protection) and 14 (Liability and Indemnity) shall survive termination.

**23. ENTIRETY**

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

**24. FURTHER ASSURANCES**

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

**25. 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 art. 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:

\_\_\_\_\_

Supplier specifically accepts and approves the following clauses:

- Art. 4 – Customer’s Responsibilities;
- Art. 6 – Acceptance of Goods;
- Art. 10 – Remedies;
- Art. 11 – Intellectual Property;
- Art. 12 – Compliance with Relevant Law;
- Art. 14 – Liability and Indemnity;
- Art. 15 – Term and Termination of Orders;
- Art. 16 – Force Majeure;
- Art. 17 – Assignment and Sub-Contracting;
- Art. 20 – Governing Law and Dispute Settlement.

Supplier’s signature:

\_\_\_\_\_