

# ABB GENERAL TERMS AND CONDITIONS

## FOR PURCHASE OF SERVICES

### ABB GTC/SERVICES (2013-1 GERMANY)

**DATE:** September 15, 2013

**FOR:** ABB Affiliates' purchases of services, excluding services related to R&D work, product development, software, information systems, and networks, transportation and logistics, erection and installation of machinery and equipment, provision of temporary work(ers), and legal support.

#### 1. DEFINITIONS AND INTERPRETATION

1.1 In this document

**“ABB GTC/Services”:** means the present ABB General Terms and Conditions for Purchase of Services (2013-1 Germany);

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

**“Applicable Terms and Conditions”:** means the terms and conditions applicable to the respective Contractual Relationship established by the Order – comprising the terms and conditions of the ABB GTC/Services and other terms and conditions contained in the Order and/or any contractual document (written frame or direct agreement) regarding the purchase of the Services;

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

**“Customer”:** means the purchasing ABB entity ordering Services from Supplier;

**“Delivery”:** means completion of Services, including provision of Work Products, if any, by Supplier in accordance with INCOTERMS 2010 DAP unless otherwise specified by the Parties in the Applicable Terms and Conditions;

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

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

**“Order”:** means Customer's purchase order (PO) issued to Supplier requesting performance of the Services as specified in the Order form and in the Order related documents, such as specifications, drawings and annexes expressly referred to in or attached by Customer to such Order; an Order has to be placed (i) as an electronic Order in case Customer and Supplier have expressly agreed to communicate that

way, or (ii) as a written Order; in both cases the applicable ABB Standard Order Forms (as published from time to time on [www.abb.com](http://www.abb.com) – [Supplying to ABB – ABB Conditions of Purchase](#) or otherwise made available by Customer to Supplier) must be used by Customer and Supplier. Any of Supplier's input to Customer's electronic Order system and any other documentation and information uploaded by Supplier to Customer's electronic systems must be provided by Supplier in the English language or as otherwise required by applicable law;

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

**“Services”:** means the services to be provided, including the Work Products to be delivered by Supplier according to the Applicable Terms and Conditions;

**“Supplier”:** means the party providing the Services to Customer on the basis of the Applicable Terms and Conditions;

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

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

**“Work Product”:** means all materials, documents, software or other items which are the result of the Services provided by Supplier under the respective Order in any form or media, including without limitation to data, diagrams, reports, specifications (including drafts).

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

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

1.2.2 Headings to clauses are for convenience only and do not affect the interpretation of the ABB GTC/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/Services (latest version as of the date of placing the Order by Customer) shall apply if (i) Supplier accepts Customer's Order for purchase of Services, or if (ii) the Parties conclude an agreement for purchase of Services, provided that the agreement or the Order for purchase of Services expressly refers to and incorporates the ABB GTC/Services as Applicable Terms and Conditions.

2.2 Each Order requires acceptance by Supplier either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part. Customer's Order form may specify a limited time period for acceptance; lapsing of such period without Supplier's acceptance of the Order shall mean that the Order will no longer be binding on Customer. Variation Orders requested by Supplier shall only become effective after express written confirmation by Customer.

2.3 The ABB GTC/Services are the only terms and conditions upon which Customer is prepared to deal with Supplier for the provision of Services, and it shall govern the Contractual Relationship between Customer and Supplier to the exclusion of all other terms or conditions,

except if and to the extent otherwise expressly agreed in writing between Customer and Supplier.

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

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

### 3. SUPPLIER'S RESPONSIBILITIES

3.1 Supplier shall provide the Services and deliver the Work Products:

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 and in the other documents being part of the Contractual Relationship;

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

3.1.4 on the due date specified in the Order;

3.1.5 in the quantity specified in the Order;

3.1.6 with all skill and care and in accordance with industry best practice.

3.2 Supplier shall not substitute or modify any of the agreed materials used for the provision of the Services or make any changes to the agreed ingredients, the design or other agreed criteria of the Work Products without Customer's prior written approval.

3.3 Supplier shall take care that Work Products are contained or packaged in the manner usual for such Work Products or, where there is no such manner, in a manner adequate to preserve and protect the Work Products 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 Services supplied; price (total amount invoiced); expenses approved by Customer, but not included in the price (to be specified by amount and category); currency; tax or VAT (amount has to be specified); tax or VAT number; payment terms.

3.5 Invoices shall be issued to Customer as stated in the Order and/or the Applicable Terms and Conditions, and shall be sent to the invoice address specified in the Order.

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

3.7 Customer may issue Variation Orders to Supplier to alter, amend, omit, add to, or otherwise change ordered Services or parts thereof, and Supplier shall carry out such Variation Orders, unless it cannot reasonably expect from Supplier to carry out such Variation Order. The Parties shall agree on the impact of the Variation Order on unit prices or other applicable prices. In case no such agreement on the price impact is in place within reasonable time, Supplier shall perform the Variation Order with the agreement to be made afterwards.

3.8 Supplier shall in no event suspend the performance of any Services or the Delivery of Work Products to Customer. In the event of Force Majeure, Clause 16 shall apply.

### 4. CUSTOMER'S RESPONSIBILITIES

4.1 In consideration of the Services provided by Supplier in accordance with the Applicable Terms and Conditions, Customer shall pay to Supplier the fees or purchase price stated in the Order in accordance with the payment terms specified therein, 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 Customer reserves the right to set off any amount and to withhold payment for Services not provided in accordance with the Applicable Terms and Conditions.

### 5. DELIVERY

5.1 The Services shall be provided at the agreed place specified in the Order, or, if no such place has been specified, at Customer's address specified in the Order.

5.2 The Work Products shall be delivered in accordance with INCOTERMS 2010 DAP, to the agreed place specified in the Order, or, if no such place has been specified, to Customer's place of business, all unless otherwise specified by the Parties in the Applicable Terms and Conditions.

5.3 Supplier shall ensure that each Delivery of a Work Product 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, where applicable the customs tariff number of the country of consignment, and, in the case of partial delivery, the outstanding balance remaining to be delivered. For controlled goods, the national export control number must be indicated and, and if the goods are subject to U.S. export regulations, the U.S. Export Control Classification Number (ECCN) must be specified in the delivery note. 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.

5.4 Work Products shall be delivered during Customer's business operation hours unless otherwise requested by Customer.

5.5 Upon Delivery of the Work Products, Supplier (or its appointed carrier) shall provide Customer with such export documents as are applicable or necessary together with a delivery note.

5.6 Ownership (title) regarding Work Products shall pass to Customer at Delivery, except if otherwise agreed in writing. For assigning of Intellectual Property in the Work Products arising from the Services Clause 11.1 shall apply.

5.7 Supplier shall invoice Customer upon Delivery in accordance with Clause 3.4 and 3.5, but such invoicing shall be conducted separately from dispatch of the Work Products to Customer.

### 6. ACCEPTANCE

6.1 Without prejudice to Clause 8 the Parties agree that appropriate testing and inspection of the Services will be performed by Supplier. Customer shall not be deemed to have accepted any Services until it has had a reasonable time to inspect them following completion or, in the case of a defective performance not reasonably detectable during the inspection, until a reasonable time after such defective performance has become apparent. Such reasonable time period shall be determined by the specifics of the Services, the defective performance and the circumstances of the provision of the Services. Any applicable obligation of Customer to inspect the Services or Work Products shall be limited to the inspection without undue delay to the extent whether the Services/Work Products meet the ordered quantity and type and whether externally visible defects or damages resulting from transport exist. In case Customer is obliged to inform Supplier of defects without undue delay, Customer shall be entitled to do so (i) in case of latent defects within two weeks and (ii) in case of other defects within one week, upon detection of the defect by Customer.

6.2 If any Services provided or Work Products 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 Services and/or the Work Products, and may request replacement of the Services and/or the Work Products, or recover all payments made to Supplier by Customer.

6.3 Upon Supplier's request Customer shall send written acceptance statement to Supplier to the extent applicable.

## **7. DELAY**

If the Delivery of the Services or the Work Products does not comply with the agreed Delivery date(s), then, without prejudice to any other rights which it may have under the Contractual Relationship or at law, Customer reserves the right to:

7.1 terminate the Contractual Relationship or the respective Order in whole or in part;

7.2 refuse any subsequent Delivery of Services or Work Products which Supplier attempts to make;

7.3 recover from Supplier any expenditure reasonably incurred by Customer in obtaining the Services or the 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 provide the Services or to deliver the Work Products on the agreed dates; and

7.5 claim compensation for liquidated damages in addition to the rights provided under Clauses 7.1 to 7.4 if such compensation right is expressly stated in the respective Order or otherwise compensation for damages.

## **8. INSPECTION**

8.1 Supplier shall allow Customer and/or its authorised representatives to inspect the Services and to test the Work Products, or parts of them at any time prior to the completion of the Services and/or the Work Products.

8.2 Notwithstanding any inspection or test sampling however conducted, Supplier shall remain fully responsible for the Services' 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 of Services or testing of Work Products by Customer and/or its authorised representatives 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 Services (including Work Products):

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 performed in accordance with generally accepted practices, procedures and standards of the respective industry and are fit for the purposes for which Services of the same description type would ordinarily be used, and that the results of the Services maintain the functionality and performance as expected by Customer according to Supplier's information, documentation and statements;

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

9.1.3 are new and unused (in case of Work Products) 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, model or otherwise;

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

9.2 The warranty period shall be twenty four (24) months from acceptance of the Services or the Work Products, if no other time period is stated in the Order or otherwise expressly agreed in writing by the Parties.

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).

## **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 Applicable Terms and Conditions, 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 expense:

10.1.1 to give Supplier another opportunity to carry out any additional work necessary to ensure that the Applicable Terms and Conditions are fulfilled;

10.1.2 to carry out (or to instruct a third party to carry out) any additional work necessary to make the Services comply with the Applicable Terms and Conditions;

10.1.3 to obtain immediate replacement of the defective Services by Services conforming with the Applicable Terms and Conditions without defects;

10.1.4 to refuse to accept any further Services, but without relieving Supplier from its liability for the defective Services;

10.1.5 to claim such damages as may have been sustained by Customer as a result of Supplier's breaches of the Applicable Terms and Conditions, statutory duty or any applicable law;

10.1.6 to claim liquidated damages expressly provided in the Order;

10.1.7 to terminate the Contractual Relationship or the respective Order 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 Applicable Terms and Conditions (including, but not limited to the ABB GTC/Services) are cumulative and are not exclusive of any rights or remedies available at law or in equity.

## **11. INTELLECTUAL PROPERTY**

11.1 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.

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

11.3 In the event that the Services provided and/or Work Products delivered by Supplier infringe any third party Intellectual Property Rights, Supplier shall, notwithstanding anything provided to the contrary or otherwise contained in the Applicable Terms and Conditions (including, but not limited to the ABB GTC/Services), 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 Work Products and/or the Services provided by Supplier.

11.4 If any infringement claim is made against Customer, Customer may without prejudice to its rights under Clause 11.3 also request at its discretion and at Supplier's cost that Supplier (i) procures for Customer the right to continue using the Work Products and/or the Services; (ii) modifies the Work Products and/or the provision of the Services so that they cease to be infringing; or (iii) replaces the Work Products and/or the Services so that they become non-infringing.

11.5 In the event Supplier cannot fulfil any of the measures provided in Clause 11.4 so that the Services / Work Products are no longer infringing, Customer shall be entitled to terminate the respective Order, to reclaim all sums which Customer has paid to Supplier thereunder and to claim compensation in accordance with Clause 11.3 and for any other costs, losses or damages incurred whatsoever.

## 12. COMPLIANCE WITH RELEVANT LAW, INTEGRITY

12.1 The Services covered by the Applicable Terms and Conditions 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 Supplier hereby warrants that it will not, directly or indirectly, and it has no knowledge that other persons will, directly or indirectly, make any payment, gift or other commitment to its customers, to government officials or to agents, directors and employees of Customer or any other party in a manner contrary to applicable laws (including but not limited to the U.S. Foreign Corrupt Practices Act) and shall comply with all relevant laws, regulations, ordinances and rules regarding bribery and corruption.

12.3 Nothing in this Contract shall render Customer liable to reimburse Supplier for any such consideration given or promised.

12.4 Supplier's material violation of any of the obligations contained in this Clause 12 shall entitle Customer to terminate this Contract with immediate effect and without prejudice to any further right or remedies on the part of Customer under this Contract or applicable law. Supplier shall indemnify Customer for all liabilities, damages, costs or expenses incurred as a result of any such violation of the above mentioned obligations and termination of this Contract.

12.5 Supplier shall procure that it receives in due time a copy of the Code of Conduct of ABB and of the ABB Supplier Code of Conduct (collectively: „Code of Conduct“). In case of contradictions the ABB Supplier Code of Conduct shall prevail. Supplier is aware that he may obtain ABB's Code of Conduct also via internet. Supplier agrees to perform, and shall ensure that all of its agents, employees, directors and subcontractors perform, its contractual obligations under this Contract with substantially similar standards of ethical behavior.

12.6 Customer has established the following internet portal where Supplier and its employees may report suspected violations of applicable laws, policies or standards of conduct: [www.abb.com/integrity](http://www.abb.com/integrity).

12.7 Supplier and its sub-contractors must comply with the ABB Lists of Prohibited and Restricted Substances and all other employment, safety, health, environmental and quality requirements made available under [www.abb.com](http://www.abb.com) – [Supplying to ABB – Doing Business with ABB](#) or otherwise and shall provide Customer with respective documents, certificates and statements if requested.

## 13. CONFIDENTIALITY AND DATA SECURITY

13.1 Supplier shall:

13.1.1 Keep in strict confidence all technical or commercial information, specifications, inventions, processes or initiatives of Customer and any other information concerning Customer's business or its

products and/or its technologies which have been disclosed to Supplier by Customer or its agents or which Supplier obtains in connection with the Services. Supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as are required to know the same for the purpose of the provision of the Services to Customer. Supplier shall ensure that such employees, agents, sub-contractors 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 reasonable safeguards against the unauthorised disclosure of Customer's confidential and proprietary information and protect confidential information in accordance with the generally accepted standards of protection in the related industry, or in the same manner and to the same degree that it protects its own confidential and proprietary information – whichever standard is the higher. Supplier may disclose confidential information to “Permitted Additional Recipients” (which means Supplier's authorised representatives, including auditors, counsels, consultants and advisors) provided always that such Permitted Additional Recipients sign with Supplier a confidentiality agreement with terminology substantially similar hereto or where applicable, are required to comply with codes of professional conduct ensuring confidentiality of such information;

13.1.3 Take all necessary steps to ensure that Customer's data or information which come into its possession or control in the course of delivering the Services are protected. In particular Supplier shall not (i) use Customer's data or information for any other purposes than for delivering the Services, or (ii) reproduce the data or information in whole or in part in any form except as may be required by the Applicable Terms and Conditions, or (iii) disclose Customer's data or information to any third party not authorised by Customer in writing to receive it;

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 delivering the Services and shall provide updates to Customer if so requested by Customer.

13.2 Supplier agrees that Customer shall be allowed to provide any information received from Supplier to any of its Affiliates.

13.3 Supplier represents and warrants that:

13.3.1 it will not use, disclose, or transfer across borders any personal data that is processed for Customer, except to the extent necessary to perform under the respective Contractual Relationship, however, in any event in compliance with applicable data privacy laws; and

13.3.2 it will comply with all applicable data privacy laws and regulations, will implement and maintain appropriate technical and organizational measures and other protections for personal data (including, without limitations, not loading any personal data provided to Supplier on (a) any laptop computer or (b) any portable storage media that can be removed from Supplier's premises unless, in each case, (i) such data has been encrypted and (ii) such data is loaded onto portable storage media solely for the purpose of moving such data to off-site storage). Further, it will report to Customer any breaches of personal data security immediately, after discovery thereof if the personal data was, or could be, accessed, used or acquired by an unauthorized person or compromised in any way and will cooperate fully with Customer in investigating any such breaches or compromises, and will comply with all instructions or other requirements provided or issued by Customer from time to time relating to personal data.

13.4 The Parties shall provide any notices, confirmations and documents required under applicable mandatory data privacy laws.

13.5 Supplier agrees to notify Customer immediately if it becomes aware of any disclosure or breach of the obligations in this Clause 13. At the request of Customer, Supplier shall take all such measures as are necessary to prevent further disclosure.

13.6 The provisions of Clauses 13.1, 13.2, 13.5 and 13.6 shall not apply to:

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

13.6.2 Any information already in the possession of Supplier at the date of the Contractual Relationship, other than under an obligation of confidentiality;

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

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

14.1 Without prejudice to applicable mandatory law, Supplier shall compensate/indemnify Customer for all damages and losses in connection with the Services (i) for Supplier's breaches of the Applicable Terms and Conditions, and (ii) for any claim, except for IPR Indemnification for which Clause 11 (Intellectual Property Right Infringements) exclusively applies, made by a third party (including employees of Supplier) against Customer in connection with the Services and to the extent that the respective liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Services delivered by Supplier and/or its sub-contractors.

14.2 Supplier shall be responsible for the control and management of all of its employees, its suppliers and/or its sub-contractors, and it shall be responsible for the acts, omissions, negligence or obligations of any of its employees, suppliers and/or sub-contractors, its agents, servants or workmen as fully as if they were the acts, omissions, 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/Services and shall extend to any substituted or replacement Services 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 general liability insurance, statutory worker's compensation/employer's liability insurance and where applicable goods transit 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**

15.1 The Order placed under the ABB GTC/Services 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 performed Services and proven direct costs reasonably incurred by Supplier for the unperformed Services, however in no event more than the agreed purchase price for the Services under the respective Order. No further compensation shall be due to Supplier. Compensation for any expenditures and materials made with regard to the unperformed Services shall be expressly excluded.

15.2 In the event of Supplier's breach of the Applicable Terms and Conditions, such as e.g. a breach of warranty, Customer shall be entitled to terminate the respective Order placed under the ABB GTC/Services if Supplier fails to take adequate and timely actions to remedy a breach as requested by Customer in accordance with Clause 10 (Remedies). In such event, Customer shall have no obligation to compensate Supplier for the already performed Services and Supplier shall be obliged to pay back to Customer any remuneration received from Customer for the performed Services.

15.3 Customer shall have the right to terminate the Order 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 without undue delay 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 performed Services.

#### **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 reasonable control of the affected Party, and for which the affected Party is not responsible, provided such event prevents the affected Party from performing the obligations under 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, 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 under the respective Order and/or the Applicable Terms and Conditions 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 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 Applicable Terms and Conditions 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 Contractual Relationship and/or the Applicable Terms and Conditions (including, but not limited to the ABB GTC/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 Contractual Relationship and/or the Applicable Terms and Conditions (including this ABB

GTC/Services), 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 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 Contractual Relationship and/or the Applicable Terms and Conditions (including this ABB GTC/Services), 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 Applicable Terms and Conditions shall not adversely affect the validity or enforceability of the remaining terms and rights, and the Applicable Terms and Conditions 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 Applicable Terms and Conditions 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.

22.3 The obligations set forth under Clause 13 (Confidentiality and Data Protection) shall be valid for a period of five (5) years from Delivery of the Services or termination of the Order unless otherwise agreed between the Parties.

## 23. ENTIRETY

The Applicable Terms and Conditions and the Order constitute the entire Contractual Relationship 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.

## 24. RELATIONSHIP OF PARTIES, EMPLOYEES OF SUPPLIER OR SUBCONTRACTORS

24.1 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.

24.2 Supplier shall be responsible for any activities performed by its employees in relation to the Services and/or the Work Products.

24.3 Supplier assumes full and exclusive responsibility for any accident or occupational disease occurred to its employees in relation to the provision of the Services.

24.4 It is expressly agreed that the Contractual Relationship does not imply any employment relationship between Customer and Supplier,

or between Customer and Supplier's employees assigned to the execution of the Contractual Relationship. 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 Services or Work Products under the Contractual Relationship.

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

24.6 Supplier shall be solely and exclusively responsible for any claims and/or lawsuits filed by its employees and hold Customer entirely safe and harmless from such claims and/or lawsuits. Supplier undertakes to voluntarily appear in court, recognizing its status as sole and exclusive employer, and to provide Customer with any and all requested documentation necessary to ensure proper legal defence of Customer in court.

24.7 Customer is authorized to make any payments due to Supplier's employees performing the Services under the Contractual Relationship, in order to avoid lawsuits. 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.

24.8 In case Supplier, his subcontractor/sub-suppliers (collectively: "Subcontractor") or any Subcontractor's Subcontractor deploys for the Service any employee requiring the aliens' labour permit under German law (in particular a "Arbeiterlaubnis-EU" or a "Aufenthaltstitel") – „permit“ –, Supplier shall submit to Customer the original or a copy of each such permit prior to commencing the Service. In case any such permit will be subject to changes, amendments, revocation etc., Supplier shall submit without undue delay to Customer the notice of the authority so changing, amending, revoking etc. the permit concerned. If the permit is subject to time limit, Supplier shall submit a new permit prior to the expiry of the expiring permit. In case the employee has no valid permit being required or in case Supplier has not submitted such permit to Customer in time, Customer shall be entitled to expel the employee concerned from the site. Supplier shall impose corresponding obligations on his Subcontractors (including the obligation to impose corresponding obligations on the Subcontractors' Subcontractors).

24.9 Supplier assures and guarantees that he shall comply with the minimum requirements for conditions of employment as set out in the German legislation concerning the delegation of employees ("Arbeitnehmerentsendegesetz"), if applicable, and that he shall not deploy for the Service any employee who does not have the aliens' labour permit required under German law. Supplier shall obtain from any Subcontractor prior to its employment a corresponding assurance/guarantee and shall impose on any Subcontractor the obligation to impose corresponding obligations (including the obligation to impose the obligations on its subcontractors) on further Subcontractors. The requirement of Customer's approval for the employment of any Subcontractor shall remain unaffected in any case. Supplier shall indemnify and hold Customer harmless from and against any liability or obligation of Customer towards third parties (including joint institutions of the parties to a collective agreement, "gemeinsame Einrichtungen der Tarifvertragsparteien") which such parties assert in view of the violation of the provisions of the "Arbeitnehmerentsendegesetz" by Supplier, by any Subcontractor of Supplier or by a hirer out of temporary worker ("Verleiher von Leiharbeitnehmern") engaged by Supplier or its Subcontractor.

## 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 respective Contractual Relationship and/or Applicable Terms and Conditions.