
**GENERAL CONDITIONS OF CONTRACT FOR
SOFTWARE MAINTENANCE**

**ABB Limited
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1. DEFINITIONS AND INTERPRETATIONS

- 1.1 In the Contract (as hereinafter defined) the words and expressions below shall have the following meanings save where the context manifestly requires otherwise:-

"**Business Day**" shall mean a day not being a Saturday, Sunday or United Kingdom Public Holiday when banks are open for conduct of normal banking business in London;

"**Contract**" shall mean the agreement between the Licensee and the Licensor for the supply of Maintenance Services comprising the Licensor's written acceptance of the Licensee's purchase order, any special conditions agreed in writing by the parties, these General Conditions, the Scope of Maintenance Services and any other documents (or parts thereof) agreed in writing by the parties as forming part of the Contract.;

Should there be any inconsistency between the documents comprising the Contract they shall, unless otherwise agreed, have precedence in the order herein listed;

"**Documentation**" shall mean any Licensor's documentation in both human readable and machine-readable format which describes the function and use of the Software and which has been provided to the Licensee under the Software Licence.

"**Effective Date**" shall mean the date specified in the Contract;

"**Intellectual Property Rights**" shall mean patents, trade marks, service marks, design rights, applications for any of the foregoing, copyright, know-how, trade or business names and other similar rights or obligations whether registerable or not in any country;

"**Licensee**" shall mean the company so named in the Contract;

"**Licensor**" shall mean ABB Limited whose registered office is at Oulton Road, Stone Staffordshire, SR15 0RS.;

"**Maintenance Fee**" shall mean the fee stated in the Contract and payable to the Licensor for the provision of the Maintenance Services;

"**Maintenance Period**" shall mean the period stated in the Contract during which the Maintenance Services shall be provided;

"**Maintenance Services**" shall mean all services made available by the Licensor under or in connection with the Contract and provided to the Licensor in accordance with the Contract;

"**Scope of Maintenance Services**" shall mean the document describing the Maintenance Services available from the Licensor and any related information.

"**Software**" shall mean the software provided in the Software Licence in machine readable and/or printed form;

"**Software Licence**" shall mean the licence between the Licensor or the Licensee for the provision of the Software and Documentation;

"**Upgrade**" shall mean any commercially released versions of the Software that the Licensor releases after the Effective Date and makes available to the Licensor through this Contract.

"**Use**" shall mean the use of the Software and/or Upgrade in accordance with the grant of use in the Software Licence;

- 1.2 The index and headings are included for convenience only and shall not affect the interpretation or construction of the Contract.

- 1.3 In the Contract, unless the context requires otherwise, any references to:
- 1.3.1 a "party" or "the parties" is to a party or the parties (as the case may be) to the Contract;
 - 1.3.2 a Recital, Clause or Schedule is to a recital of, clause of or schedule to these General Conditions (as the case may be) and references made in a Schedule to Parts or Paragraphs are to parts and paragraphs of that Schedule;
 - 1.3.3 a statute or statutory provision includes any consolidation, re-enactment, modification or replacement of the same, any statute or statutory provision of which it is a consolidation, re-enactment or replacement and any subordinate legislation in force under any of the same from time to time; and
 - 1.3.4 the masculine, feminine or neuter gender respectively includes the other genders, references to the singular include the plural (and vice versa) and references to persons include firms, corporations and unincorporated associations.

2. TECHNICAL SUPPORT/HELP DESK

- 2.1 If at any time during the Maintenance Period the Licensee or any of the persons permitted to have access to and Use of the Software pursuant to the Software Licence experiences any problems with the Use of the Software, Documentation or any Upgrades, the Licensee may request Maintenance Services from the Licensor (or its maintenance services provider specified in the Contract) by telephoning the Licensor's hotline service or sending an online electronic message to the Licensor's dedicated e-mail.
- 2.2 A person will be allocated by the Licensor to the problem immediately upon receipt of the request for Maintenance Services who will thereafter be responsible for contacting the Licensee and diagnosing and resolving the problem.
- 2.3 The call reference, problem details and any other relevant information shall be recorded by the Licensor's customer support system. The telephone support line shall be manned during normal office hours, 09.00 to 17.00 (United Kingdom local time). Limited cover may be provided at other times and a message system will be available outside office hours.
- 2.4 The Licensor shall respond to a request for assistance within 12 hours (United Kingdom elapsed normal office hours) of receipt. The Licensor shall endeavour to resolve any request for assistance within three (3) working days of the receipt of all information relevant to the progress of the solution.

3. UPGRADES

Licensor shall deliver all Upgrades of the Software as soon as practicable following the availability of such Upgrades.

4. CORRECTION OF DEFECTS

- 4.1 Should any component of the Software or any Upgrade fail to conform to its functional specification the Licensor shall correct the defect. If any defect cannot be remedied by Licensor within a reasonable period of time Licensor and the Licensee must endeavour to agree on a compromise solution for the defect to be implemented.
- 4.2 In the event of a defect, Licensor shall provide a solution in accordance with the general help desk provisions detailed in clause 2.

5. MAINTENANCE FEE AND PAYMENT

- 5.1 In consideration of the Maintenance Services provided by the Licensor, the Licensee shall pay

to the Licensor the Maintenance Fee.

- 5.2 The Maintenance Fee for each Maintenance Period shall be due at the beginning of each Maintenance Period in which Maintenance Services are to be provided.
- 5.3 Invoices will only be issued by the Licensor in respect of the Maintenance Fee on or after the date on which such fees are due, and any invoice shall be paid within 30 days of the date of issue
- 5.4 Value added Tax, where applicable, shall be shown separately on all invoices as a strictly nett extra charge.
- 5.5 From the date of the commencement of the Maintenance Period the fees specified in the Contract shall remain firm against upward movement for the duration of the Maintenance Period. Any proposals to increase any such fees should the Maintenance Period be extended, shall be notified in writing to the Licensee ninety (90) Business Days prior to proposed date of increase.

6. CONFIDENTIALITY AND PROPRIETARY RIGHTS

- 6.1 Except as otherwise expressly provided for under the terms of the Contract, all information relating to the Contract, any Upgrade, the Software and any other information provided by either party under this Contract, together with the terms of the Contract itself, have been provided by the parties on the understanding that such information is confidential. Such details shall be treated by either party and any of its employees, agents or sub-contractors as confidential both during the Maintenance Period and after its termination or completion and shall not be divulged to any person whatsoever other than those persons to whom it is necessary to supply such details for the purposes of this Contract. The Licensee shall procure that any third party to whom a grant of use is extended under the Software Licence and to whom information is divulged under this Contract shall themselves observe the requirements of this Clause.
- 6.2 The provisions of clause 6.1 shall not apply to:
 - 6.2.1 Information that at the time of disclosure was published or otherwise generally available to the public;
 - 6.2.2 Information which after disclosure by the disclosing party is published or becomes generally available to the public otherwise than through any act or omission on the part of the recipient;
 - 6.2.3 Information that the recipient can show was already in its possession at the time of disclosure;
 - 6.2.4 Information which is acquired from others who did not obtain it under an undertaking of confidentiality to either of the parties.
- 6.3 Licensee acknowledges the value of Licensor's' trade marks, service marks and trade names, wherever used or registered. The Licensee shall not acquire any rights to the marks or names of the Licensor under this Contract and shall have no right to use such marks and names. Licensee shall not remove any proprietary, copyright or trade secret legend from any Software
- 6.4 Except as permitted by the Software Licence Licensee shall not copy, translate, disassemble, or decompile nor create or attempt to create, by reverse engineering or otherwise the Software or any Upgrade.
- 6.5 or Documentation or any copy thereof.
- 6.6 Any Upgrades to the Software and Documentation supplied to Licensee by Licensor shall become a part of the Software and Documentation and shall be subject to the grant of Use and

any other relevant terms of the Software Licence and this Contract.

7. LIMITATION OF LIABILITY

- 7.1 Neither party excludes or limits liability to the other party for death or personal injury.
- 7.2 The parties expressly agree that should any limitation or provision contained in this Clause 7 be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.
- 7.3 Without prejudice to any other rights or remedies of the parties, each party shall take every practicable precaution not to damage any property or cause injury to any persons.
- 7.4 The liability of either party for all damage to the other party's property arising from a single event under the Contract shall be limited to damages that in no event shall exceed five million pounds sterling (£5,000,000).
- 7.5 Licensor's entire liability and the Licensee's exclusive remedy under the warranties, express or implied, provided under this Contract will be either (i) to repair or replace the Upgrade to the Software which does conform with the warranty, or, (ii) should the Licensor be unable to rectify any defect in the Upgrade, to terminate the Contract and refund any unused portion of the Maintenance Fee for the remaining Maintenance Period.
- 7.6 To the maximum extent permitted by applicable law, the Licensor limits its aggregate liability under the Contract for direct damage to an amount equivalent to the Maintenance Fee.
- 7.7 To the maximum extent permitted by applicable law, and notwithstanding anything to the contrary in the Contract or otherwise, neither party shall be liable to the other for any indirect, special, incidental or consequential damages such as, but not limited to, loss of revenue, loss of business, loss of use, interruption of business, loss of operation time, costs of capital and cost in connection with interruption of operation.

8 LICENSOR'S INSURANCES

- 8.1 The Licensor shall have in force and shall require any sub-contractor, to have in force the following insurances that shall extend to indemnify the Licensee against any claim for which the Licensor or sub-contractor may be legally liable under the Contract:
- 8.1.1 Employers Liability Insurance; and
- 8.1.2 Public Liability (Third Party) Insurance for such sum and range of cover as the Licensor deems appropriate but for an indemnity of not less than £5 million pounds sterling for any one accident.
- 8.2 Upon request the Licensor shall provide satisfactory evidence to the Licensee that the insurances required under the Contract have been effected.

9 WARRANTY

- 9.1 The Licensor does not warrant that operation of any Upgrade supplied as part of the Maintenance Services will be error free or uninterrupted. It is the Licensee's exclusive responsibility to ensure that any Upgrade is suitable for its needs and the entire risk as to its performance and as to results obtained from its Use, is assumed by the Licensee.
- 9.2 Licensor as licensor of the Software and any Upgrade warrants to the Licensee that for the Maintenance Period:

9.2.1 that any Upgrade delivered under this Contract will function substantially as described in the Software Documentation provided with the Software Licence for a period of 90 days after the date of incorporation into the Software; provided that the system requirements are met, the third party components are operating in accordance with their respective specifications, and Licensee operates the Software and Upgrade in accordance with the instructions set forth in the Documentation and uses suitably skilled personnel to operate the Software and the Upgrade.;

9.2.1 the medium on which the Software and the Upgrade are provided will be free from defects in material and workmanship under normal conditions of use.

This warranty excludes defects caused by accidents, abuse, poor storage or handling, or any unauthorised use referred to in the Software Licence.

10 INTELLECTUAL PROPERTY RIGHTS INDEMNITY

If during the Maintenance Period any suit, action or other legal proceedings are commenced against the Licensee based upon a claim that use of any Upgrade infringes a valid patent or other third party intellectual property rights in the country of use, Licensee shall promptly inform the Licensor in writing. The Licensor may at its own discretion have the option of modifying the Upgrade to avoid any infringements asserted against the Licensee or of obtaining a licence for the benefit of the Licensee. The Licensor shall indemnify the Licensee against all costs, fee and expenses arising from any such claim for infringement.

11 TERM AND TERMINATION

11.1 Unless sooner terminated as provided herein the Contract shall become effective from the Effective Date and shall continue in effect for the duration of the Maintenance Period stated in the Contract. The Maintenance Period may, subject to written agreement between the parties, be extended for a further period equivalent to the initial period.

11.2 The Contract shall terminate upon the earlier to occur of the following:-

11.2.1 at the end of the Maintenance Period in the absence of any agreed extension;

11.2.2 thirty (30) days after either party gives notice to the other party that such other party is in material breach of the Contract unless such other party has remedied such breach during the thirty (30) day notice period;

11.2.3 forthwith upon notice from either party to the other party in the event of the other party passes a resolution or a Court makes an order that the other party be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the other party; if the other party shall have a Receiver appointed of the whole or any part of its assets or if an order shall be made or a resolution passed for winding up that party unless the notifying party agrees that such order or resolution is part of a scheme of reconstruction of the other party or if the said Receiver is willing and in the notifying party's opinion is able to abide by the terms of this Agreement.

11.3 The rights and obligations under Clauses 6 and 7 shall survive any termination or expiration of the Contract .

11.4 The rights of either party to terminate the Contract in accordance with this clause 11 is in addition to and shall in no way limit or prejudice any other right or remedy which that party may have in consequence of any breach by the other party, or any other right or liability of that party accrued at the date of termination.

12 ASSIGNMENT BY LICENSEE

The Licensee shall not be entitled assign the Contract to any other party.

13 GENERAL PROVISIONS

- 13.1 The Contract represents the entire agreement between the parties in relation to the subject matter of the Contract and supersedes any previous agreement (whether written or oral) between any of the parties in relation to that subject matter.
- 13.2 Each of the parties excludes all liability for misrepresentations made by it prior to the Contract to the extent permitted by law.
- 13.3 The Licensee warrants that in entering into the Contract it has not relied upon any representation agreement or understanding other than those expressly set out in the Contract.
- 13.4 No delay in the exercise or non-exercise by either party of any of its rights under or in connection with the Contract shall operate as a waiver or release of that right. Any such waiver or release must be specifically granted in writing signed by the party granting it and shall not be construed as a waiver in respect of any other or further failure whether of a like or different character.
- 13.5 No term of this Contract is intended to confer a benefit on, to be enforceable by or give any rights under the Contracts (Third Parties) Act 1999 to any person who is not a party to the Contract.

14 NOTICES

Any notice, demand or other communication to be served under this Contract may be served upon any party hereto only by sending or delivering the same or sending the same by registered first class post, telex, telegraph or facsimile transmission to the party to be served at its registered address first written above or such other address as may from time to time be notified in writing for the purpose by one party to the other.

15 FORCE MAJEURE

Any delay or non-performance of any provision of the Contract caused by conditions beyond the reasonable control of the performing party (which shall include in the case of Licensor the acts and omissions of its sub-contractors) shall not constitute a breach of the Contract and the time for performance of such provision if any shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

16 GOVERNING LAW

The Contract shall be construed in accordance with the Laws of England and the parties irrevocably submit to the exclusive jurisdiction of the English High Court to settle any disputes which may arise in connection with the Contract.