
**GENERAL CONDITIONS OF CONTRACT FOR
SERVICES**

**ABB Limited
Daresbury Park
Daresbury
Warrington
Cheshire
WA4 4BT**

1. DEFINITIONS

"Client" shall mean the person, firm or company to whom ABB Limited is to provide the Services;

"Contract" shall mean the agreement between the Client and ABB Limited for the supply of the Services and comprising ABB Limited's written acceptance of the Client's order, the Scope of Work and these General Conditions;

"Contract Price" shall mean the aggregate of the charges ascertained in accordance with the Contract as the price for the supply of the Services;

"Documentation" shall be all means which carry information relevant to the Services in whichever form including but not limited to drawings, calculations, data sheets, specifications, programmes, correspondence, electronic media, models and photographs;

"ABB" shall mean ABB Limited;

"ABB Group" shall mean all companies that are for the time being Subsidiaries or the Holding Company of ABB Limited or another Subsidiary of any such Holding Company;

"Force Majeure" shall mean, in relation to either party, any circumstances beyond the reasonable control of that party including, but not limited to, fire, flood, explosion, war, riots, action, inaction or request of Governmental Authority, strike, labour dispute or shortage, injunction, inability to obtain or shortage of fuel, power, gas, equipment, transportation or materials and accident to or breakage of machinery or apparatus;

"Governmental Authority" shall mean any national governmental authority, local government authority, regulatory or administrative agency, governmental commission, bureau, court or tribunal, or any other similar body or organisation;

"Intellectual Property Rights" shall mean patents, processes, registered and unregistered trade marks, registered and unregistered service marks, registered designs, utility models (in each case for the full period thereof),

applications for any of the foregoing, inventions, confidential information, know-how, business names, trade names, brand names, copyright and rights in the nature of copyright, design rights and get-up and similar rights subsisting in any country;

"Proposal" shall mean ABB's proposal for supply of the Services which refers to these General Conditions or to which these General Conditions are annexed or with which they are submitted;

"Regulations" shall mean the standards, specifications, codes of practice and requirements specified by the Client and agreed by ABB at the date of the Contract;

"Services" shall mean the engineering services and/or research services and/or other consultancy services (as the case may be) described as the "Scope of Work" in the Proposal;

"Subsidiary" and **"Holding Company"** shall have the meanings ascribed to them in Section 736 of the Companies Act 1985 (as amended by the Companies Act 1989).

2. APPLICATION OF CONDITIONS

Only the terms and conditions contained in the Contract shall apply, notwithstanding any terms and conditions which the Client may purport to impose as the prevailing conditions. If any other terms and conditions are to apply to the Contract they must be expressly agreed by the Client and ABB in writing.

3. RESPONSIBILITIES OF THE PARTIES

- 3.1. ABB shall, with all reasonable skill, care and diligence, provide the Services in accordance with the Contract and the Regulations. In the event of apparent discrepancies or conflict in the Regulations or between the Contract and the Regulations, the matter shall be referred by ABB to the Client for its decision. Such decision by the Client shall absolve ABB from responsibility in the interpretation of the Regulations. In cases where the Services are to be provided for use outside the United Kingdom, it shall be the responsibility of the Client to ensure that the Documentation and

Regulations comply with relevant local laws and regulations concerning health and safety at work and protection of the environment.

- 3.2. The Client shall be responsible for supplying reliable and accurate information to ABB to enable ABB to provide the Services. ABB shall inform the Client as soon as reasonably practicable of any inadequacies in the information, including Documentation, supplied by the Client which prevents ABB from carrying out the Services and the Client shall make good, as soon as possible, such inadequacies to the reasonable satisfaction of ABB. ABB shall not be responsible for any loss, liability, claim, proceeding or delays caused by such inadequacies.
- 3.3. If in the opinion of ABB any instruction of the Client is likely to prevent ABB from or prejudice ABB in fulfilling any of its obligations under the Contract, ABB shall so notify the Client in writing and the parties shall then review whether and in what manner such obligations need to be changed. Such changes as are agreed shall be confirmed in writing by the Client within fourteen (14) days. If such a change results in a change in the contract price or delivery time, the change shall be considered to be a variation under Clause 9.
- 3.4. Such portions of the Documentation as ABB and the Client agree, shall be submitted to the Client for approval. All approvals or otherwise of such agreed portions of the Documentation shall be given by the Client within fourteen (14) days of receipt of the portion. Failure to notify by the Client within fourteen (14) days will be taken as approval. If the Client shall not approve such portions of the Documentation, the same shall be forthwith modified by ABB to meet the reasonable requirements of the Client and shall be re-submitted for approval.
- 3.5. ABB shall use all reasonable endeavours to ensure that its personnel when visiting the Client's premises shall comply with all the rules and regulations which are applicable thereto provided the Client has informed ABB of such rules and regulations in good time and in the English Language.
- 3.6. If in the provision of the Services ABB's personnel visit any of the Client's site(s) then the Client will be responsible for:

- 3.6.1. the provision of a safe working environment including the provision of safety, health and environmental information regarding the site(s), equipment and processes on which ABB's personnel are to work; and
- 3.6.2. advising ABB's personnel of the rules and regulations applying to the site(s) on which they work.

4. PROPERTY, DOCUMENTATION AND INVENTIONS

- 4.1. All documentation and advice provided by ABB to the Client under this Agreement shall be in the English Language.
- 4.2. The Intellectual Property Rights in Documentation provided by the Client to ABB shall remain with the Client.
- 4.3. Inventions (and all Intellectual Property Rights therein) made by ABB or by its employees in the performance of the Services shall belong to ABB.
- 4.4. ABB grants to the Client subject to clause 7, a fully paid up non-exclusive, non transferable licence and right to use the information provided by ABB to the Client pursuant to the Contract for the purpose for which the Services were undertaken and for no other purposes provided that ABB shall at all times retain all Intellectual Property Rights in such information.

5. ASSIGNMENT

The Contract is personal to the parties and shall not be assigned or transferred to any third party either by the Client or ABB without the other party's written consent, which consent shall not be unreasonably withheld or delayed, provided that ABB shall be free to assign or transfer the Contract to any successor in title of its business or to any other member company of the ABB Group from time to time without the Client's consent.

6. INFRINGEMENT OF RIGHTS OF THIRD PARTIES

- 6.1. ABB will indemnify the Client against any claim of infringement of any letters patent, registered design or copyright (published at the date of the Contract) to the extent that such claim relates to the information supplied by ABB in connection with the Services and against all reasonable costs and damages

which the Client may incur in any action for such infringement or for which the Client may become liable in any such action, provided always that this indemnity shall not apply to any infringement which is due to ABB having followed a design or instruction furnished or given by the Client or to the use of that which is provided under the Contract in a manner or for a purpose not specified or disclosed to ABB and provided also that this indemnity is conditional on the Client giving to ABB the earliest possible notice in writing of the claim being made or the action threatened or brought against the Client and on the Client permitting ABB at ABB's own expense to conduct litigation that may ensue and all negotiations for a settlement of the claim.

- 6.2. The Client on its part warrants that any design or instruction furnished or given by it will not be such as will cause ABB to infringe any letters patent, registered design or copyright in the execution of the Contract.

7. CONFIDENTIALITY

- 7.1. All information comprised in or relating to the contents of the Contract or negotiations relating to matters envisaged by the contents of the Contract shall be treated by the parties as confidential and (subject to Clauses 7.4 and 7.5 below) shall not be disclosed to third parties by any party without the prior consent of the other.
- 7.2. All information of the party ("the disclosing party") (including, without limitation, the business, Intellectual Property Rights, technology, methods, know how or customers of the disclosing party) and coming to the attention of a party ("the recipient party") in the implementation of the Contract shall be treated by the recipient party as confidential and (subject to Clauses 7.4 and 7.5 below) shall not be disclosed to third parties without the prior consent of the disclosing party.
- 7.3. The parties shall take all reasonable steps to ensure that their employees and representatives shall maintain the confidentiality of the matters referred to in Clauses 7.1 and 7.2.
- 7.4. The parties hereto are entitled to disclose to their respective sub-contractors, advisers, lenders, investors or prospective sub-contractors, lenders or investors such information as is reasonably required for the purposes of performing the obligations of the Contract provided always that such

companies and/or such other persons, as aforesaid, keep such information confidential in accordance with the terms hereof, that they shall not have the right to make further disclosure of such confidential information under this Clause 7.4 to any other party, and provided further the original recipient party remains responsible to the disclosing party for any unauthorised disclosure of such information.

7.5. Nothing in this Clause 7 shall preclude disclosure of any information required by law, or by any Governmental Authority (provided that the party having the obligation to disclose shall give prior written notice to the other party, and use all reasonable endeavours to secure confidential treatment of such information) nor shall this Clause 7 apply to information which has entered into the public domain otherwise than as a result of a breach of this Clause 7.

7.6. Each party is entitled to disclose to any person(s) to whom it is considering the sale or transfer of any part or all of its undertaking or business (or any of its or the prospective purchaser's lenders or investors or any of their respective professional advisers):

7.6.1. such information as it reasonably necessary for the evaluation of such business; and/or

7.6.2. in the event that such proposed acquisition takes effect, such information as is reasonably necessary for the purposes of performing the obligations under the Contract;

provided always that such person(s), undertake to keep such information confidential in accordance with the terms hereof and that the non-disclosing party's consent shall have been sought if the potential purchaser manufactures or sells products or provides services which compete directly with those of the non-disclosing party.

7.7. The above obligations of secrecy shall remain in full force and effect for a period of ten (10) years from the date of expiry or termination of the Contract.

7.8. Without prejudice to the Client's rights under Clause 4.4, the Client shall have no right to use any methods and know how used by ABB in developing and providing the Services and such methods and know how which are disclosed to the Client shall be kept secret by the Client in accordance with Clause 7.2.

8. PROGRAMME FOR THE SERVICES

- 8.1. The date on which the Services and any interim stages thereof shall be completed shall be agreed in writing by the parties provided however that time shall not be of the essence of the Contract.
- 8.2. Any costs to ABB which are caused by delay in completion of the Services shall be borne by the parties in proportion to the responsibility of each party for the delay.
- 8.3. Any costs to ABB which are caused by the acceleration of completion of the Services due to a request of the Client shall be borne by the Client.

9. VARIATIONS

- 9.1. Neither party shall be obliged to accept any request from the other party to vary the Contract.
- 9.2. In each case where the parties agree to vary the Contract, the parties shall also agree any revised scope and/or price and/or completion date relating to such variation prior to ABB undertaking the variation work.

10. SUSPENSION OR TERMINATION OF CONTRACT

If the Contract is terminated by ABB pursuant to Clause 17 or suspended or terminated by the Client other than pursuant to Clause 17 and without ABB's written permission, ABB shall be entitled to payment of a fair and reasonable sum representing the work actually performed (including any costs and profits associated therewith), all costs incurred or due to be incurred by ABB in relation to the purchase of any sub-contract services, consultancy services and/or goods for the provision of the Services and ABB's lost profits on the unperformed work.

11. INSURANCE

- 11.1. ABB shall have in force, and shall use all reasonable endeavours to ensure that any subcontractor employed by it shall have in force, the following insurances:

- 11.1.1. Employer's Liability Insurance required pursuant to the Employer's Liability (Compulsory Insurance) Act 1969 or any statutory amendment or re-enactment thereof in force from time to time.
- 11.1.2. Public Liability (Third Party) Insurance against legal liabilities for death of, or injury to, any person (other than an operative or other person in the employment of ABB or any of its subcontractors) and loss of or damage to any property arising out of execution of the Contract. Such insurance shall be for two million (£2m) pounds sterling for each and every incident.

12. INDEMNIFICATION FOR PERSONAL INJURY AND PROPERTY DAMAGE

- 12.1. ABB shall indemnify the Client against any claim, loss or liability for damage to property (to the monetary limits of the insurance cover required to be carried pursuant to Clause 11.1.2) or personal injury, incurred by reason of the negligence of ABB arising out of or connected with the Services; provided, however, that such indemnification shall exclude liability for personal injury or property damage if contributed to or caused by the negligence of the Client, its agents or employees.
- 12.2. The Client shall promptly notify ABB of any alleged claim or circumstances which might lead to a claim under Clause 12.1. ABB reserves the right to assume the entire defence of any action which may result in a claim by the Client for indemnity under Clause 12.1.
- 12.3. ABB (and all other companies within the ABB Group) shall have no further liability to the Client for property damage, whether arising out of negligence, wilful misconduct or from any other cause whatsoever.

13. DEFICIENCIES AND DEFECTS

Subject to Clause 14, in the event that there are any deficiencies and defects in the Services ABB shall correct its errors or omissions in the Services; provided, however, that deficiencies and defects which are due to incorrect or incomplete information or particulars furnished by the Client shall be corrected by ABB at the Client's expense. This commitment is exclusive and in lieu of all other express or implied warranties or remedies whether arising out of contract, tort or otherwise.

14. LIMIT OF LIABILITY

- 14.1. Save for any liability in respect of which ABB is required to effect insurance pursuant to Clause 11, any liability (including liability in negligence) of ABB and all other companies within the ABB Group for deficient or defective Services (including any liability under Clause 6.1) shall not in the cumulative extend beyond correction of its errors or omissions in the Services up to the value of the Contract Price.
- 14.2. ABB (and all other companies within the ABB Group) shall in no event be liable for loss of use, loss of production, lost profit, lost business or any indirect or consequential damages of any kind or nature whatsoever.
- 14.3. For the purposes of Clauses 12.3, 14.1, 14.2 and 14.4 the Client agrees that ABB is acting as agent for and on behalf of all members of the ABB Group.
- 14.4. The Client hereby declares that it has accepted these terms and conditions in the knowledge that the liability of ABB (and other companies within the ABB Group) is limited and that the prices and charges payable for the Services have been calculated accordingly.

15. TERMS OF PAYMENT

- 15.1. ABB shall be paid for the Services either:
- 15.1.1. on a schedule of rates basis; or
 - 15.1.2. on a lump sum basis; or
 - 15.1.3. on a convertible basis; or
 - 15.1.4. on any other agreed basis;
- and the selected method or methods shall be specified in the Proposal or, if not so specified, as agreed by the parties in writing from time to time.
- 15.2. The Client shall make payment by the 20th of the month following the month of invoice or as otherwise agreed by the parties.

- 15.3. The fees and prices quoted in any Proposal do not include any Value Added Tax ("VAT") or other applicable sales tax or duty of any kind, which (if applicable) shall be added to such price in question and shall be paid by the Client to ABB and the Client shall keep ABB fully indemnified against any such VAT, sales tax or duty.
- 15.4. Payment of all taxes, duties, fees and charges imposed on the Contract Price outside the United Kingdom shall be the responsibility of the Client.
- 15.5. The Client shall be liable for interest on a day to day basis (both before and after judgement) at the rate of two (2%) per annum above the prevailing National Westminster Bank Plc base lending rate upon all monies unpaid after the due date until payment is received.

16. FORCE MAJEURE

In the event of Force Majeure the party affected shall be excused performance of its obligations under or pursuant to the Contract if and to the extent that performance of such obligations is delayed, hindered or prevented by such Force Majeure and performance of such obligations shall be suspended for such period as the Force Majeure lasts. The party affected shall immediately inform the other party of the beginning and end of such Force Majeure circumstances. For the avoidance of doubt, a Force Majeure event may only excuse a delay in making the payment due under any Contract where the delay in payment was caused by the Force Majeure.

17. DEFAULT

- 17.1. If either party defaults in any of its obligations under the Contract and fails to rectify such default within thirty (30) days of notice by the other party, such other party may without prejudice to any other of its rights terminate the Contract forthwith by notice to the defaulting party.
- 17.2. If either party becomes insolvent or makes an arrangement with his creditors or has a receiver or administrative receiver appointed or commences to be wound up the other party may without prejudice to any other of its rights terminate the Contract forthwith by notice to the former.
- 17.3. Termination pursuant to Clauses 17.1 or 17.2 shall not relieve the defaulting party of any responsibility for damage or loss arising out of or prior to the

default. No delay in issuing a notice of default shall be deemed a waiver. Upon termination, all unpaid invoices rendered to one party by the other shall become immediately payable.

- 17.4. The provisions of Clauses 7 and 14 shall continue to apply notwithstanding termination of the Contract.

18. PLURALITY OF ORDERS

In the event of the parties agreeing that these General Conditions will apply collectively to a plurality of purchase orders over an agreed period of time, each such order shall constitute a separate Contract.

19. NO AGENCY AND NO PARTNERSHIP

- 19.1. Save as otherwise expressly provided for in the Contract unless otherwise agreed between the parties in writing, neither party shall make purchases, sales pledge the credit of the other, or incur any liabilities whatsoever on behalf of the other or hold itself out as acting as agents for the other.
- 19.2. Nothing in the Contract is intended to or shall give rise to any relationship of partnership or profit sharing in the nature of partnership between the parties hereto.

20. NOTICES

- 20.1. Any notice, demand or other communication to be served under the 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, unless otherwise notified in writing at its registered office address or facsimile number.
- 20.2. A notice or demand served by registered first class post shall be deemed duly served two (2) Business Days after posting and a notice or demand sent by facsimile transmission shall be deemed to be served at the time of the transmission and in proving service of the same it shall be sufficient to prove, in the case of a letter, that such letter was properly stamped or franked first class, addressed and placed in the post and, in the case of a facsimile transmission, that such facsimile was duly transmitted to a current facsimile number of the addressee at the address referred to above

21. GENERAL PROVISIONS

- 21.1. 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.
- 21.2. Each of the parties excludes all liability for misrepresentations made by it prior to the Contract to the extent permitted by law.
- 21.3. The Client 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.
- 21.4. 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.
- 21.5. 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.

22. LAW

The construction, validity and performance of the Contract shall be governed by English Law and both parties hereby submit irrevocably to the exclusive jurisdiction of the English Courts.