ABB GENERAL TERMS AND CONDITIONS

FOR PURCHASE OF GOODS AND/OR SERVICES (2018-1 AUSTRALIA)

1. DEFINITIONS AND INTERPRETATION

1.1 The following terms have the following meanings:

ABB GTC: these ABB General Terms and Conditions for Purchase of Goods and/or Services (2018-1 Australia);

Affiliate: any entity which directly or indirectly controls, is controlled by, or is under common control with a Party;

Contract: a written agreement and/or the Order for the purchase of Goods and/or Services by Customer from Supplier, including any other documents submitted by Customer to form part thereof, such as but without limitation to any specifications;

Customer: the party ordering Goods and/or Services from Supplier;

Customer Data: any data or information, including Personal Data, acquired by Supplier in preparation of or during the fulfilment of the Contract, irrespective of whether such data or information relates to Customer, its Affiliates or their respective customers or suppliers;

Delivery: delivery of Goods by Supplier in accordance with Clause 5.1;

Embedded Software: software necessary for operation of Goods, and embedded in and delivered as integral part of Goods;

Environmental Performance Requirements: those characteristics of the purchased item that need to be present to ensure environmentally safe functioning in the intended application. They include meeting any mandatory external standards (such as Australian Standards and/or regulatory requirements e. g. energy efficiency) and any other standards specified in the Contract. For Services, they include ensuring that Services are provided by suitably qualified personnel to a suitably accredited service standard;

Goods: the items to be delivered by Supplier in accordance with the Contract and/or all materials, documents, or other deliverables which are the result of Services provided by Supplier under the Contract in any form or media, including but without limitation to data, diagrams, drawings, reports and specifications;

Goods and Services Tax/GST: any tax, levy, charge or impost implemented under the A New Tax System (Goods and Services Tax) Act (the GST Act) or any Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act;

Intellectual Property Rights: (a) patents, utility models, copyrights, database rights and rights in trademarks, trade names, designs, knowhow, and invention disclosures (whether registered or unregistered); (b) applications, reissues, confirmations, renewals, extensions, divisions or continuations for any of these rights; and (c) all other intellectual property rights and similar forms of worldwide protection;

Order: Customer's order issued to Supplier for the purchase of Goods and/or Services;

Party: Customer or Supplier, collectively the Parties;

Personal Data: any data or information of an identified or identifiable natural person;

Safety Performance Requirements: those characteristics of the purchased item that need to be present to ensure safe functioning in the intended application. They include meeting any of our mandatory standards or external standard (such as Australian Standards and/or regulatory requirements). They also include those detailed specifications applicable to manufactured items that are necessary to guarantee the continued safe operation of the process in which they are used. For Services, they include ensuring that Services are provided by suitably qualified personnel to a suitably accredited service standard;

Services: the services to be provided by Supplier in accordance with the Contract;

Supplier: the party providing the Goods and/or Services to Customer;

Variation Order: 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 References to clauses are references to clauses of the ABB GTC.

1.3 Headings are for convenience only and do not affect the interpretation of the ABB GTC.

2. APPLICATION

2.1 The ABB GTC govern the Contract.

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

2.3 Supplier shall accept the Contract either expressly by written statement or impliedly by fulfilling the Contract in whole or in part.

2.4 Any amendments to the Contract must be agreed in writing.

3. SUPPLIER'S RESPONSIBILITIES

3.1 Supplier shall deliver the Goods and provide the Services:

3.1.1 in accordance with the applicable laws and regulations;

3.1.2 in accordance with the Contract and all Customer instructions;

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

3.1.4 fit for any particular purpose specified in the Contract or, in absence thereof, fit for the purposes for which such Goods and/or Services would ordinarily be used.

3.2 Supplier shall ensure that the Goods are packed according to industry standards and in a manner adequate to preserve and protect the Goods. Damage to any Goods, material or equipment resulting from improper packing shall be paid by Supplier.

3.3 When Customer identifies quality related issues on the part of Supplier, Customer will notify Supplier thereof. Notwithstanding other remedies available to Customer under the Contract, Customer may instruct Supplier to undertake at Supplier's risk and expense an analysis into the root cause(s) of the quality related issues; such analysis being undertaken and reported to Customer within ten (10) calendar days of the notification of the quality related issue(s). Customer reserves the right to undertake an audit of Supplier based on the results of the root cause analysis or where Supplier fails to comply with this Clause.

3.4 Supplier shall notify Customer of all "hazardous materials" (as that term is defined in applicable laws and regulations) which are contained in the Goods.

3.5 Supplier shall furnish Customer with copies of all applicable "material safety data sheets" for Goods no later than the shipment date stated in the Contract.

3.6 Customer may issue Variation Orders to Supplier, and Supplier shall carry out such Variation Orders. If any Variation Order cause an increase or decrease in the cost of, or the time required for the performance of, any Services or Goods, an equitable adjustment shall be made in the purchase price or Delivery schedule, or both, in writing. Any Supplier claim for adjustment under this Clause will be deemed waived unless asserted within thirty calendar (30) days from Supplier's receipt of the Variation Order. Variation Orders requested by Supplier only become effective after written confirmation by Customer.

3.7 Supplier must not suspend or delay the Delivery of any Goods or the provision of any Services.

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

3.9 Supplier is solely and exclusively responsible for any claims and/or lawsuits filed by its employees and/or subcontractors, and shall, without any limitations, defend, indemnify and hold Customer harmless from and against any claim, proceeding, action, fine, loss, cost, damages and expenses arising out of or relating to any such claims and/or lawsuits, and any noncompliance with legislation, regulations, codes of practice, guidance and other requirements of any relevant government or governmental agency applicable to Supplier, its employees or subcontractors. Supplier undertakes to appear in court at its own cost if requested by Customer, acknowledging its status as sole and exclusive employer, and to provide Customer with all requested documentation and information necessary to ensure proper legal defence of Customer in court. The preceding sentence does not apply if the liability or damage was caused by Customer's gross negligence or intentional act.

3.10 Customer is authorized to make any payments due to Supplier's employees and subcontractors performing Services, or providing Goods under the Contract, in order to avoid lawsuits, liens or encumbrances. Such payments may be made through withholding Supplier's credits, 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.

3.11 Where it is necessary for Supplier to enter Customer's premises, Supplier will need to complete the necessary occupational health and safety and security on site inductions before commencing work.

3.12 Supplier must, in delivering the Goods to Customer's premises and performing the Services:

(a) use its best efforts not to interfere with any of Customer's activities, or the activities of any other person, on Customer's premises;

(b) be aware of, comply with, and ensure that Supplier's personnel comply with:

(i) all applicable laws regulations and industrial awards and agreements, including all applicable safety, health and environment laws and regulations; and

(ii) all safety, health and environment guidelines, rules and procedures applicable to Customer's premises or specified in the Contract; and

(iii) all directions and orders given by Customer's representatives; and

(c) ensure that Customer's premises are left secure, clean, orderly and fit for immediate use.

4. PAYMENT, INVOICING

4.1 Subject to Supplier providing an unconditional undertaking in the form approved by Customer, and given by an approved financial institution, as security to the value specified in the Order within 14 calendar days of the date of the Order, in consideration of the Goods delivered and/or the Services provided by Supplier in accordance with the Contract, Customer shall pay to Supplier the purchase price stated in the Contract provided the invoice fulfils the requirements defined in the Contract.

4.2 Unless otherwise stated, all prices specified in the Contract are in Australian currency, fixed and not subject to escalation.

4.3 Unless the Contract provides otherwise, the price is inclusive of:

(a) all charges for packaging, packing, insurance and Delivery of the Goods in accordance with the Contract;

(b) the cost of the Services and any items used or supplied in conjunction with the Services; and

(c) all taxes except GST.

4.4 Supplier shall submit invoices in an auditable form, complying with applicable laws, generally accepted accounting principles and the specific Customer requirements, containing the following minimum information: Supplier name, address and reference person including contact details; invoice date; invoice number; Order number and Supplier number; address of Customer; quantity; specification of Goods and/or Services; price (total amount invoiced); currency; tax or GST amount; tax or GST number; Authorized Economic Operator and/or Approved Exporter Authorization number and/or other customs identification number, if applicable; payment terms as agreed.

4.5 Invoices must be sent to the billing address specified in the Contract.

(i) Unless the Contract states that progress payments are to be made, Supplier must invoice Customer upon delivery of the Goods and/or upon completion of the Services.

(ii) Where progress payments are to be made, Supplier must invoice Customer at the end of each calendar month (or other period specified in the Contract) for Goods delivered and/or Services performed by Supplier in that month or that period (as the case may be).

When submitting an invoice under Clause 4, Supplier must provide Customer with all relevant records to enable Customer to calculate and/or verify the amount of the invoice together with the valid Order number.

In the event that a valid Order number has not been issued, then an invoice must visibly contain an ABB contact officer's full name (given and surname).

Invoices that do not visibly quote a valid Order number or an ABB contact officer's full name may be returned to Supplier, resulting in possible payment delay.

Customer will pay all invoices rendered to it under Clause 4.5 (i) or (ii), 45 calendar days from the end of the month of the invoice date, except where Customer:

(a) exercises its right to retain part of the price pursuant to Clauses 4.8 and 12.4; or

(b) disputes the invoice, in which case:

(i) Customer will pay the undisputed part of the relevant invoice (if any) and dispute the balance; and

(ii) if the resolution of the dispute determines that Customer is to pay an amount to Supplier, Customer will pay that amount as soon as practicable after resolution of that dispute.

Invoices from Supplier to Customer must be either posted or emailed to the following addresses.

Post:
ABB Australia Pty Limited
PO Box 725
Auburn
NSW 1835
Email: *abbau.accountspayable@recall.com*

(Note – this email address is not to be used for reciprocal communication and is for the receiving of invoices only.)

Invoices sent by email are to be sent each separately as an attachment in PDF or TIFF format, using the correct layout (e. g. portrait invoices must be sent in portrait layout). Any support documentation to an invoice must be included within the same PDF or TIFF document that contains the invoice.

Customer cannot accept more than one invoice containing the same invoice number. Invoices submitted to Customer containing the same invoice number as previous invoices submitted may be returned to Supplier, resulting in possible payment delay.

4.6 Customer will reimburse expenses only at cost and to the extent agreed in writing.

4.7 Services charged on the basis of hourly rates require written confirmation of Supplier's time sheets by Customer. Supplier shall submit such time sheets to Customer for confirmation as may be instructed by

Customer but latest together with any related invoice. Confirmation of time sheets cannot be construed as acknowledgement of any claims. Customer is not obliged to pay invoices based on time sheets which are not confirmed by Customer in writing.

4.8 Customer reserves the right to set off or withhold payment for Goods and/or Services not provided in accordance with the Contract, or retain part payment where Supplier has failed to provide security under Clause 4.1.

5. DELIVERY, PERFORMANCE OF SERVICES

5.1 Unless agreed otherwise in the Contract, the Goods shall be delivered in accordance with INCOTERMS 2010 FCA, to the place defined in the Contract or, if no such place has been defined, to Customer's place of business.

5.2 The Services shall be provided at the place specified in the Contract or, if no such place has been specified, at Customer's place of business.

5.3 Supplier shall provide no later than at the time of acceptance of the Contract the following minimum information: number of packages and contents, the customs tariff numbers of the country of consignment, and the countries of origin for all Goods. For controlled Goods, the relevant national export control numbers must be indicated and, if the Goods and/or Services are subject to U.S. export regulations, the U.S. Export Control Classification Numbers (ECCN) or classification numbers of the International Traffic in Arms Regulations (ITAR) must be specified. 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. Supplier shall state the Order number on all invoices (in particular but not limited to commercial, pro forma or customs invoices).

5.4 The Goods shall be delivered, and Services shall be provided during Customer's business hours unless otherwise requested by Customer.

5.5 Upon Delivery, Supplier (or its appointed carrier) shall provide Customer a delivery note and any other required export and import documents not mentioned in Clause 5.3. If Customer has approved partial delivery, such delivery note shall also include the outstanding balance.

5.6 Ownership of the Goods passes to Customer at Delivery. To the extent that the Goods contain Embedded Software, ownership of such Embedded Software will not pass to Customer, but Supplier shall grant, or – as applicable – shall procure that the third party owner grants, Customer and all users a worldwide, irrevocable, perpetual, transferable, non-exclusive, royalty-free right to use the Embedded Software as integral part of such Goods and/or for servicing either of them.

5.7 Shipping

(a) A full set of documents are to be rendered for each shipment and forwarded only to Customer on the day of shipment. Bills of lading must be forwarded under separate registered mail. All invoices and shipping documents must show the Order number as set out herein.

(b) Any loss of profits, bonding or wharf charges or consequential damages arising from not adhering to these and the following requirements shall be payable by Supplier.

(c) For domestic shipments or deliveries, invoices (original only), delivery dockets and/or shipping specifications (in triplicate) are required. For foreign shipments, customs invoices, bill of lading and shipping specifications all in quadruplicate, the whole properly completed and certified in accordance with Australian customs regulations.

6. ACCEPTANCE

6.1 Delivery of Goods or provision of Services may not be deemed to be acceptance of such Goods or Services by Customer. Customer shall have reasonable time to inspect or test the Goods and/or Services and to report any defects to Supplier. If a defect in the Goods and/or Services was not reasonably detectable during the inspection, Customer shall have reasonable time to provide notice of such defect after it has become apparent and/or to reject the Goods and/or Services.

6.2 The Parties may agree on a certain acceptance procedure, in which case acceptance will be subject to Customer's written acceptance statement. Supplier shall inform Customer in writing within a reasonable time period in advance when the Goods and/or Services are ready for acceptance.

6.3 Customer may enforce any remedy defined in the Contract for any rejected Goods or Services.

7. DELAY

If the Delivery of Goods or the provision of Services does not comply with the agreed date(s), Customer may:

7.1 terminate the Contract in whole or in part;

7.2 refuse any subsequent delivery of the Goods or provision of the Services;

7.3 recover from Supplier any expenses reasonably incurred by Customer in obtaining the Goods and/or Services in substitution from another supplier;

7.4 claim damages for any cost, loss, expenses and liquidated damages incurred by Customer which are attributable to Supplier's delay; and

7.5 claim liquidated damages as agreed in the Contract.

8. WARRANTY AND REMEDIES

8.1 Supplier warrants that the Goods and/or Services comply with the Contract, including but without limitation to Supplier's responsibilities as defined in Clause 3.1.

8.2 Supplier warrants that the Goods and/or Services meet the Safety Performance Requirements and Environmental Performance Requirements of the intended purpose.

8.3 Supplier warrants that the Goods are new and unused at the date of Delivery and remain free from defects during the warranty period.

8.4 The warranty period is twenty four (24) months from Delivery.

8.5 In case of breach of any warranty which is not remedied within forty eight (48) hours from Customer's notification, or in case of any other breach of the Contract, Customer is entitled to enforce any or more of the following remedies at its discretion and at Supplier's expense:

8.5.1 to give Supplier another opportunity to carry out any additional work necessary to ensure that the Contract is fulfilled, and/or to obtain prompt repair or replacement of the defective Goods and/or Services;

8.5.2 to carry out (or to instruct a third party to carry out) any additional work necessary to make the Goods and/or Services comply with the Contract;

8.5.3 to refuse any further Goods and/or Services;

8.5.4 to claim such damages as may have been sustained by Customer as a result of Supplier's breach of the Contract;

8.5.5 to terminate the Contract; in such event Customer has no obligation to compensate Supplier, and, at Customer's option, Supplier shall pay back to Customer any remuneration received from Customer for the Goods and/or Services and take back the Goods at Supplier's own cost and risk.

8.6 In case of a breach of any warranty, the entire warranty period shall be restarted for the defective Goods/Services from the date the remediation is completed to Customer's satisfaction.

8.7 The rights and remedies available to Customer under the Contract are cumulative and are not exclusive of any rights or remedies available at law or in equity.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 Subject to Clause 9.2, Supplier hereby grants Customer, or undertakes to procure that Customer is granted, a worldwide, irrevocable, transferable, non-exclusive, royalty-free license to use the Intellectual Property Rights in the Goods, including Embedded Software, if any.

9.2 Supplier herewith assigns to Customer full ownership rights in any Intellectual Property Rights in Goods resulting from the Services. Supplier further agrees, upon Customer's request and at its cost, to take all

further steps necessary to perfect Customer's ownership to the Intellectual Property Rights.

9.3 Intellectual Property Rights in any Goods created by or licensed to Supplier prior or outside a Contract (Pre-Existing IPR) will remain vested in Supplier (or the third party owner). To the extent that Pre-Existing IPR are embedded in any Goods resulting from the Services, Supplier grants, or undertakes to procure that the third party owner grants, Customer and its Affiliates a worldwide, irrevocable, transferable, non-exclusive, royalty-free license to use the Pre-Existing IPR as part of such Goods, including the right to improve, develop, market, distribute, sublicense or otherwise use such Pre-Existing IPR.

9.4 Supplier must specify in writing and prior to Delivery all open source software contained in or used by Embedded Software, if any, and request Customer's written approval. Supplier agrees to replace at its own cost any open source software components rejected by Customer with software of at least the same quality and functionality.

9.5 If any claim is made against Customer that the Goods and/or Services infringe a third party's Intellectual Property Rights, Supplier shall at its cost, but at Customer's discretion (i) procure for Customer and Customer's clients, as the case may be, the right to continue using the Goods and/or Services; (ii) modify the Goods and/or Services so they cease to be infringing; or (iii) replace the Goods and/or Services by non-infringing equivalents. Otherwise, Customer is entitled to terminate the Contract and to reclaim all sums which it has paid to Supplier thereunder.

10. COMPLIANCE, INTEGRITY

10.1 Supplier shall provide the Goods and/or Services in compliance with all relevant laws, regulations, and codes of practice.

10.2 Supplier and its subcontractors must comply with the ABB List of Prohibited and Restricted Substances and report to Customer the substances contained in the Goods. Supplier must also comply with the reporting and other requirements regarding Conflict Minerals made available under **www.abb.com – Supplying – Material Compliance – ABB Policy and Supplier Requirements** or otherwise and shall provide Customer with documents, certificates and statements as requested. Any statement made by Supplier to Customer (whether directly or indirectly) with regard to materials used for or in connection with the Goods and/or Services will be deemed to be a representation under the Contract.

10.3 Supplier represents and warrants that it is and will remain fully compliant with all applicable trade and customs laws, regulations, instructions, and policies, including, but not limited to, satisfying all necessary clearance requirements, proofs of origin, 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.

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

10.5 Both Parties warrant that each will not, directly or indirectly, and that each 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 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, the UK Bribery Act 2010 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 the Contract will render either Party or any of its Affiliates liable to reimburse the other for any such consideration given or promised.

10.6 Supplier herewith acknowledges and confirms that Supplier 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 both ABB Codes of Conduct online under **www.abb.com/Integrity**. Supplier agrees to perform its contractual obligations in accordance with both ABB Codes of Conduct.

10.7 ABB has established reporting channels where Supplier and its employees may report suspected violations of applicable laws, policies or standards of conduct: Web portal: **www.abb.com/Integrity – Reporting Channels**; contact details specified on this Web portal.

10.8 Any violation of an obligation contained in this Clause 10 is a material breach of the Contract and entitles the other Party to terminate the Contract with immediate effect and without prejudice to any further rights or remedies available thereunder or at law. Notwithstanding anything to the contrary in the Contract, Supplier shall, without any limitations, indemnify and hold harmless Customer for all liabilities, damages, cost or expenses incurred as a result of any such violation and/or termination of the Contract, or arising from export restrictions concealed by Supplier.

11. CONFIDENTIALITY, DATA SECURITY, DATA PROTECTION

11.1 Supplier shall keep in strict confidence all Customer Data and any other information concerning Customer's or its Affiliates' business, their products and/or their technologies which Supplier obtains in connection with the Goods and/or Services to be provided (whether before or after acceptance of the Contract). Supplier shall restrict disclosure of such confidential material to such of its employees, agents or subcontractors or other third parties as need to know the same for the purpose of the provision of the Goods and/or Services to Customer. Supplier shall ensure that such employees, agents, subcontractors or other third parties are subject to and comply with the same obligations of confidentiality as applicable to Supplier and will be liable for any unauthorized disclosures.

11.2 Supplier shall apply appropriate safeguards, adequate to the type of Customer Data to be protected, against the unauthorised access or disclosure of Customer Data and protect such Customer Data 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 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 (i) such information is disclosed on a strict need-to-know basis, and (ii) such Permitted Additional Recipients sign with Supplier a confidentiality agreement with terms substantially similar hereto or, where applicable, are required to comply with codes of professional conduct ensuring confidentiality of such information. Supplier shall comply with, and ensure that the Permitted Additional Recipients comply with, any security procedure, policy or standard provided to Supplier by Customer or any of its Affiliates from time to time, and in particular with the ABB Cyber Security Requirements for Suppliers as made available under **www.abb.com/Supplying/Cybersecurity**, or as otherwise set out in the Contract.

11.3 Supplier must not (i) use Customer Data for any other purposes than for providing the Goods and/or Services, or (ii) reproduce the Customer Data in whole or in part in any form except as may be required by the Contract, or (iii) disclose Customer Data to any third party, except to Permitted Additional Recipients or with the prior written consent of Customer.

11.4 Supplier shall install and update at its own cost adequate virus protection software and operating system security patches for all computers and software utilized in connection with providing the Goods and/or Services.

11.5 Supplier shall inform Customer without delay about suspicion of breaches of data security or other serious incidents or irregularities regarding any Customer Data.

11.6 Supplier agrees that Customer may provide any information received from Supplier to Affiliates of Customer and to third parties.

11.7 Protection of Personal Data

11.7.1 If Customer discloses Personal Data to Supplier, Supplier shall comply with all applicable data protection laws and regulations.

11.7.2 Supplier shall apply appropriate physical, technical and organizational measures to ensure a level of security of Personal Data appropriate to the respective risk and the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services.

11.7.3 Supplier agrees that it will not withhold or delay its consent to any changes to this Clause 11 which in Customer's or its Affiliates' reasonable opinion are required to be made in order to comply with applicable data protection laws and regulations and/or with guidelines and advice from any competent supervisory authority, and agrees to implement any such changes at no additional cost to Customer.

11.7.4 Supplier acknowledges that the processing of Personal Data in accordance with the Contract may require the conclusion of additional data processing or data protection agreements with Customer or its Affiliates. To the extent such additional agreements are not initially concluded as part of the Contract, Supplier, its relevant Affiliates or subcontractors shall upon Customer's request promptly enter into any such agreement(s), as designated by Customer and as required by mandatory law or a competent data protection or other competent authority.

12. LIABILITY AND INDEMNITY

12.1 Without prejudice to applicable mandatory law, Supplier shall, without any limitations, indemnify and hold harmless Customer for all liabilities, damages, cost, losses or expenses incurred by Customer as a result of Supplier's breach of the Contract. Supplier shall, without any limitations, indemnify and hold harmless Customer for any claim made by a third party against Customer in connection with the Goods and/or Services, including but without limitation to claims that such Goods and/or Services infringe a third party's Intellectual Property Rights. Upon Customer's request Supplier shall defend Customer against any third party claims.

12.2 Notwithstanding anything else contained in the Contract or otherwise to the contrary, Customer shall not be liable whether by way of indemnity, guarantee, or by reason of any breach of contract, or of statutory duty (to the fullest extent permitted at law) or by reason of tort (including but not limited to negligence) or any other legal principle or doctrine for any loss of profits, loss of use, loss of revenue or loss of anticipated savings, business interruption, loss of power, costs of capital or costs of replacement of power, increased costs of or loss of anticipated savings or for any financial or economic loss (whether direct or indirect) or for any consequential or indirect loss or damage whatsoever. Customer's total liability under, arising out of or in connection with the Contract howsoever caused and under any legal theory or doctrine, shall never exceed the price paid by Customer for the Goods and/or Services.

12.3 Supplier is responsible for the control and management of all of its employees, suppliers and/or subcontractors, and it is responsible for their acts or omissions as if they were the acts or omissions of Supplier.

12.4 Customer reserves the right to set off any claims under a Contract against any amounts owed to Supplier.

13. TERMINATION

13.1 Customer may terminate the Contract for convenience in whole or in part by giving Supplier thirty (30) calendar days written notice. In such event Customer shall pay to Supplier the value of the delivered but unpaid Goods and/or Services and proven direct cost reasonably incurred by Supplier for the undelivered Goods and/or Services, however in no event more than the price for the Goods and/or Services agreed under the Contract. No further compensation will be due to Supplier.

13.2 In the event of Supplier's breach of the Contract, Customer is entitled to terminate the Contract in accordance with Clause 8.5.

13.3 Customer may terminate the Contract with immediate effect by notice in writing in the event that (i) 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 (ii) any circumstances arise which entitle the court or a creditor to appoint a receiver or administrator or to make a winding-up order; or (iii) other similar action is taken against or by Supplier by reason of its insolvency or in consequence of debt; or (iv) there is a change of control of Supplier.

13.4 Upon termination Supplier shall immediately and at Supplier's expense return to Customer all Customer property (including any Customer Data, documentation, and transfer of Intellectual Property Rights) then under Supplier's control and provide Customer with the complete documentation about the delivered Goods and/or Services.

14. QUALIFYING CAUSE OF DELAY

14.1 Supplier shall be entitled to such extension of time for Delivery as Customer, acting reasonably, assesses if Delivery is or will be delayed by a qualifying cause of delay, and Supplier gives Customer, within 7 calendar days of when Supplier should reasonably have become aware of that causation occurring, a written claim for an extension of time evidencing the facts of causation and of the extent of the delay to Delivery.

14.2 A qualifying cause of delay means any act, default or omission of Customer in breach of Customer's obligations under the Contract that has caused a delay in the critical path of the performance of the Contract and in relation to which Supplier has taken all reasonable steps to mitigate the effects thereof on Delivery.

15. ASSIGNMENT AND SUBCONTRACTING

15.1 Supplier may neither assign, nor transfer, encumber nor subcontract the Contract, nor any parts thereof (including any monetary receivables from Customer) without prior written approval of Customer.

15.2 Customer may assign, transfer, encumber, subcontract or deal in any other manner with the Contract or parts thereof to its Affiliates.

16. NOTICES

Any notice must be given duly signed by registered mail, courier, fax or by e-mail to the address of the relevant Party as stated in the Contract or to such other address as such Party may have notified in writing. E-mail and fax require written confirmation of the receiving Party. Supplier's reply, correspondence, information or documentation related to the Contract must be provided in the language used in the Contract.

17. WAIVERS

Failure to enforce or exercise any term of the Contract does not constitute a waiver of such term and does not affect the right later to enforce such or any other term therein contained.

18. GOVERNING LAW AND DISPUTE SETTLEMENT

18.1 The Contract is governed by the laws of the country (and/or the state, as applicable) where Customer is registered, however under exclusion of its conflict of law rules and the United Nations Convention on International Sale of Goods.

18.2 If Customer and Supplier are registered in the same country, any dispute arising in connection with the Contract which cannot be settled

amicably shall be submitted for resolution to the jurisdiction of the competent courts at Customer's place of registration.

18.3 If Customer and Supplier are registered in different countries, any dispute arising in connection with the Contract which cannot be settled amicably shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance therewith. Place of arbitration shall be Customer's place of registration. The language of the proceedings and of the award shall be English.

19. SEVERABILITY

The invalidity or unenforceability of any term of the Contract will not adversely affect the validity or enforceability of the remaining terms. The Contract will be given effect as if the invalid or unenforceable term had been replaced by a term with a similar economic effect.

20. SURVIVAL

20.1 Provisions of the Contract which either are expressed to survive its termination or from their nature or context it is contemplated that they are to survive such termination will remain in full force and effect notwithstanding such termination.

20.2 The obligations set forth in Clauses 8 (Warranty and Remedies), 9 (Intellectual Property Rights), 11 (Confidentiality, Data Security, Data Protection) and 12 (Liability and Indemnity) exist for an indefinite period of time and survive expiration or termination of the Contract for any reason.

21. ENTIRETY

The Contract constitutes the entire agreement between the Parties and replaces any prior agreement between them with regard to its subject.

22. RELATIONSHIP OF PARTIES

22.1 The relationship of the Parties is that of independent parties dealing at arm's length and nothing in the Contract may 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 must not represent itself as or act on behalf of Customer.

22.2 The Contract does not imply any employment relationship between Customer and Supplier, or between Customer and Supplier's employees assigned to the execution of the Contract. Customer remains free of any responsibility or liability for labour, social security or taxes with respect to Supplier and its employees assigned to the execution of the Contract.

23. INSURANCE

23.1 Supplier must effect or cause to be effected all risks property insurance for the Goods and for any specialised plant and equipment used in relation to the supply of Goods against the risk of loss, damage or destruction caused by insurable risks including theft, malicious damage, fire, lightening, storm and tempest for their full reinstatement or replacement value and including cover while the Goods and specialised plant and equipment are in transit or, in temporary storage during the course of transit.

23.2 Supplier must effect or cause to be effected:

(a) except in respect of the risks dealt with at Clause 23.2 (b) and Clause 23.2 (c), a broad form public and products liability policy written on an occurrence basis with a limit of indemnity of not less than $ 10 million for each occurrence and, with respect to products liability only, also in the aggregate for all occurrences during the policy period, which covers Supplier's liability (including to Customer) in respect of:

(i) loss of, damage to, or loss of use of property; and

(ii) the injury (including disease or illness) to, death of or illness of any person, happening anywhere in Australia and arising out of or in the course of or in connection with the performance by Supplier of the Contract. The definition of products under the policy is to be sufficiently wide to include all Goods to be supplied by Supplier;

(b) comprehensive motor vehicle insurance with a limit of liability of not less than $ 10 million for each occurrence which covers third party property damage arising from or in relation to any plant or vehicles (registered or unregistered) or any injury to or death of any person arising from or in relation to the use of any unregistered plant or vehicle in the course of performing the Contract; and

(c) compulsory third party vehicle insurance for all registered vehicles used in the course of performing the Contract.

23.3 Supplier must effect or cause to be effected insurance which fully insures any injury, damage, expense, loss or liability suffered or incurred by any person engaged by Supplier in the performance of the Contract (or their dependants) giving rise to a claim under any statute relating to workers or accident compensation or for employers liability at common law and where possible at law extending to indemnify Customer as principal for principal's liability to persons engaged in performing the Contract by Supplier.

23.4 Supplier must effect or cause any other insurances reasonably required by Customer from time to time.

23.5 Supplier must ensure that each insurance referred to in this Clause 23 is in effect from the date of the Contract and are maintained:

(a) in the case of the insurance referred to at Clause 23.1, until the Goods are delivered and installed (if required) in the case of the Goods, and until the expiration or termination of the Contract in the case of the specialised plant and equipment;

(b) in the case of the insurances referred to at Clause 23.2 and Clause 23.3 until the expiry or earlier termination of the Contract; and

(c) in the case of any insurance required by Customer under Clause 23.4, until the date notified by Customer.

23.6 Supplier must, if requested by Customer, in respect of each of the insurances referred to in this Clause 23 provide Customer with a copy of the policy wording and a certificate of currency at the date of the Contract.

23.7 If Supplier does not comply with Clause 23.6, Customer may, but is not obliged to, effect the relevant insurances and may recover the cost of doing so as a debt from Supplier or deduct the premiums payable from any amounts payable to Supplier under the Contract.

23.8 Supplier must notify Customer immediately where it receives a notice of cancellation or any other notice in respect of the insurances required to be maintained under this Clause 23 from any insurer, including providing a copy of that notice without undue delay.

23.9 Supplier must ensure that the insurance referred to in Clause 23.2 extends to insure Customer for its vicarious liability for acts or omissions by Supplier and Supplier's personnel and the policy must provide that the insurer waives all rights of subrogation which it may otherwise be entitled against Customer to the extent that Customer is insured under the policy.

23.10 In respect of any insurance effected which insures multiple insureds Supplier must ensure that the policy includes a cross-liability clause, a clause in which the insurer agrees not to impute the acts or omissions of one insured to another insured and, a clause in which the insurer agrees that any non-disclosures or misrepresentations prior to the effecting of the policy by any person will not be imputed to any other insured.

23.11 Subject to Supplier's obligations to its insurers, Supplier must inform Customer immediately if it becomes aware of any actual, threatened or likely claims under any of the insurances referred to in this Clause 23 which could materially reduce the available limit.

23.12 The provisions of this Clause 23 are not to be read so as to reduce Supplier's liability under any other provision of the Contract or these ABB GTC/Goods and/or Services.