

# ABB GENERAL TERMS AND CONDITIONS

## FOR PURCHASE OF GOODS AND/OR SERVICES (2023-1 GERMANY)

### 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 (2023-1 Germany);

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

**Contract:** a written agreement signed by the Parties and/or the Order by the Customer, which is confirmed in writing by the Supplier for the purchase of Goods and/or Services from Supplier, including any other documents submitted by Customer to form part thereof, such as but without limitation to any specifications (which shall include any Supplier specifications where Customer agrees to use, or places an Order relying on, such 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;

**Delivery Location:** Customer's nominated warehouse, factory or other premises for physical delivery of Goods and/or Services, which may be the premises of one of Customer's Affiliates (including such location as may be listed in any relevant price list) or third party freight or logistics providers, or if no location is nominated, Customer's place of business;

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

**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;

**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 protection;

**Order:** Customer's order issued to Supplier for the purchase of Goods and/or Services, including any purchase order issued electronically;

**Party:** Customer or Supplier, collectively the Parties;

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

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

**Subcontractor:** subcontractor and/or sub-supplier;

**Supplier:** the party providing the Goods and/or Services to Customer (or to any Customer's Affiliate at a relevant Delivery Location);

**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;

**Written or in writing:** as provided in Clause 22.

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. SCOPE OF APPLICATION

2.1 The ABB GTC form part of the Contract.

2.2 Terms and conditions delivered with or contained in Supplier's quotations, acknowledgements, acceptances, specifications or similar documents do not form part of the Contract, and Supplier waives any right which it might have to rely on such terms and conditions, unless agreed to by Customer in writing.

2.3 Supplier shall accept the Contract either expressly by written statement or impliedly by starting to fulfill the Contract.

2.4 Any amendments to the Contract including this sentence 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 (including by providing any necessary documentation) and all Customer instructions;

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

3.1.4 of the agreed quality and suitable for the use stipulated in the Contract or, in absence thereof, fit for the use which is customary for such Goods and/or Services and which the Customer can expect.

3.2 Supplier shall ensure that the Goods are packed according to industry standards and any applicable laws and regulations, in a manner adequate to protect the Goods and to enable safe unloading and inspection at the relevant Delivery Location.

3.3 When Customer identifies quality related issues on the part of Supplier, Customer will notify Supplier thereof. Without prejudice to 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, calculated from the time the information was provided by the Customer. 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. Supplier shall also pro-actively advise Customer if it becomes aware of any quality related issues that may affect the Goods and/or Services, and the provisions of this Clause 3.3 shall otherwise apply as if the issue had been notified by Customer.

3.4 Customer may issue Variation Orders to Supplier in writing, and Supplier shall carry out such Variation Orders. If any Variation Order causes an increase or decrease in the cost of, or the time required for the performance of any Services an equitable adjustment shall be made in the purchase price and/or Delivery schedule will be made in writing. If no such agreement is achieved between Supplier and Customer within a reasonable period of time, Customer may nevertheless instruct the performance of such Variation Order. The Parties afterwards shall agree on the consequences as provided hereinbefore. Supplier shall carry out a variation only upon receipt of a written Variation Order by Customer and continues to be bound by the other provisions of the Contract.

3.5 Unless otherwise provided by law or by the Contract, Supplier must not suspend the Delivery of any Goods or the provision of any Services.

3.6 Where the ABB GTC allocate rights to Customer or any of its (relevant) Affiliates, such clause is not intended to extend Supplier's obligations, but to reflect that a Customer's Affiliate maybe the beneficiary of a Contract or may otherwise be relevant.

Where the ABB GTC require Customer to act (e.g.: to respond, to notify, to test etc.), Customer is entitled to have this carried out by a Customer's Affiliate or a third party.

3.7 Supplier is solely and exclusively responsible for any claims and/or lawsuits filed by its employees and/or subcontractors in connection with the performance of the Contract, and – unless caused by Customer's gross negligence or intentional act – Supplier shall, without any limitations, defend, indemnify and hold Customer (and any relevant Customer's Affiliate) 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 (and/or any relevant Customer's Affiliate) with all requested documentation and information necessary to ensure proper legal defense of Customer or its relevant Affiliates in court. The preceding

sentence shall not apply if the liability or damage was caused by Customer's gross negligence or intentional act.

3.8 Customer is authorized to make, or procure the making of, any payments due to Supplier's employees and Subcontractors providing Goods and/or Services 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 and hold harmless Customer and its relevant Affiliates for any payments made.

#### 4. PAYMENT, INVOICING

4.1 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. Payment shall be made in the country in which Supplier is registered, to a bank account in the name of Supplier. The price is inclusive of all fees and taxes (other than VAT or equivalent) and of all costs of manufacturing, processing, warehousing and packaging (including returning any returnable packaging) of any Goods.

4.2 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, Supplier address (via which Supplier in fact can be contacted) and Supplier's 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); tax base (net amount in total); currency; tax or VAT amount; tax or VAT number; Authorized Economic Operator and/or Approved Exporter Authorization number and/or other customs identification number, if applicable; payment terms as agreed.

Supplier shall state the Order number on all invoices (in particular but not limited to commercial, pro forma or customs invoices). Supplier shall indemnify and hold Customer harmless from and against any third party claims (including claims by authorities, such as tax authorities) and cost arising from non-compliance by Supplier with this Section 4.2.

4.3 Invoices must be sent to the billing address specified in the Contract (or as otherwise agreed with Customer).

4.4 Customer shall pay the invoice in accordance with the payment terms agreed in the Contract.

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

4.6 Services to be 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.

4.7 Customer reserves the right to set off or withhold payment for Goods and/or Services not provided in accordance with the Contract.

4.8 If an invoice received by Customer is not paid by the due date, Supplier may give notice in writing that the amount is overdue. Thirty (30) days after receipt of notice, unless the payment is disputed in good faith by Customer, until receipt of the amount owed Supplier may charge interest at the rate of 3% above the 3-month LIBOR rate (for unsecured USD loans) on any unpaid and undisputed amount. This does not apply if the amount owed or its due date was rightly disputed by the Customer.

4.9 Supplier shall neither employ for the performance of the Contract any person who does not have the labor permit required, nor employ any Subcontractor or any hiring company for temporary workers ("*Verleiher von Leiharbeitnehmern*") without prior written approval by Customer.

4.10 The following provisions shall apply to the extent that the German legislation concerning the delegation of employees (*Arbeitnehmerentsendegesetz*), the German legislation concerning the compliance with labor agreements (*Tariftreuegesetz*) and/or the German legislation concerning the payment of minimum wages (*Mindestlohngesetz*) is/are applicable (all hereinafter together: the "*Special Labor Laws*"):

(i) Supplier undertakes to comply with the Special Labor Laws and to ensure compliance therewith by all of its direct or indirect Subcontractors within the contract chain (collectively referred to as "Employed Third Parties");

(ii) Supplier shall indemnify and hold Customer harmless from and against any liability or obligation of Customer towards third parties for Supplier's or Employed Third Parties' breach of any of the Special Labor Laws, including without limitation any administrative fines, fees and cost, save as where Customer has acted intentionally;

(iii) in case of Supplier's or Employed Third Parties' non-compliance with any Special Labor Laws, Customer shall be entitled to rescind the Contract or to terminate the Contract with immediate effect; and

(iv) in case Customer reasonably suspects that Supplier or any Employed Third Party has breached any Special Labor Laws, Supplier shall prove by appropriate means compliance with such laws. "Appropriate means" shall include without limitation: inspection of payrolls on wages and salaries or time accounts (in pseudonymized form) or submission of comparably meaningful documents evidencing compliance with the Special Labor Laws.

4.11 Supplier shall obtain a written commitment letter from all of its Employed Third Parties in accordance with the provisions of Sections 4.9 and 4.10 (including but not limited to the obligation to impose such obligations on Employed Third Parties) prior to the commencement of their respective work under the Contract.

## 5. DELIVERY, PERFORMANCE OF SERVICES

5.1 Unless agreed otherwise in the Contract, the Goods shall be delivered in accordance with INCOTERMS 2020 FCA, to the Delivery Location.

5.2 The Services shall be provided at the Delivery Location.

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; EU supplier's declaration or other documents/declarations as proof of preferential and/or non-preferential origin. If the Goods are subject to national export controls, the relevant national export control

List numbers or the sub-number of the EU dual-use list must be specified and, if the Goods and/or Services are subject to U.S. export regulations, the appropriate U.S. Export Control Classification Numbers (ECCN) or classification numbers of the International Traffic in Arms Regulations (ITAR) must be specified. EU supplier's declaration or other documents for proof of preferential origin as well as conformity declarations and marks of the country of dispatch or destination are to be submitted without being requested, certificates of origin upon request. Supplier shall not deploy nor subcontract persons or Subcontractors which are listed in actual sanction lists of following regulations:

- (EG) No. 881/2002 ISIS (Da'esh) and Al-Qaida;
- (EU) No. 753/2011 Afghanistan;
- (EU) 1542/2018 chemical weapons;
- (EU) 2019/796 cyber attacks;
- (EU) 1998/2020 human rights violations;
- (EU) 1230/2022 Terrorism;
- Embargo Regulations of EU.

5.4 The Goods shall be delivered, and Services shall be provided, during Customer's business hours (or those of the requested Delivery Location) unless otherwise requested, or agreed to, by Customer.

5.5 Upon Delivery, Supplier (or its appointed carrier) shall provide Customer (or, if requested, any nominated Customer Affiliate at the Delivery Location) a delivery note and any other required export and import documents mentioned in Clause 5.3 which do not have to be provided (or non-compliantly have not been provided) already at the time of acceptance of the Contract. If Customer has approved partial delivery or where Supplier intends to have a partial Delivery and such partial Delivery reasonably should be accepted by Customer, 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. For the avoidance of doubt, Supplier shall have no rights of retention of title, and Supplier will convey good title to the Goods, free of any liens or encumbrances. Transfer of title and ownership in the Goods to Customer shall not release Customer from its obligation to pay for those Goods, in accordance with the terms of the Contract.

## 6. ACCEPTANCE

6.1 Any obligation or duty of Customer to inspect the Goods shall be limited to the inspection without undue delay whether such Goods meet the ordered quantity and type and whether externally visible defects or damages resulting from transport exist. In case as per applicable law Customer is obliged, or is under the duty, to inform Supplier of defects, 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 the time of detection of the defect by Customer. The preceding provision shall apply accordingly in view of Services. The provisions of Clause 6.1 shall not affect any applicable provision exempting Customer to a broader extent from such obligations or duties.

6.2 The Services shall require written acceptance statement by Customer. Fictions of acceptance provided by applicable law shall require under the Contract that the Services have been completely provided and are substantially in line with the Contract. The Parties may agree also for other cases on a certain acceptance procedure, in which case acceptance will be subject to Customer's written acceptance statement. Supplier shall inform Customer (and any relevant Customer's Affiliate) 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

7.1 Supplier will deliver the Goods or provide the Services in accordance with any date(s) or delivery times specified in the Contract. If the Delivery of Goods or the provision of Services does not comply with the agreed date(s) or delivery times, Customer may:

- (i) terminate or rescind the Contract in whole or in part with Clauses 8.4.5 through 8.7 being applicable;
- (ii) refuse to accept any subsequent delivery of the Goods or provision of the Services;
- (iii) recover from Supplier any expenses reasonably incurred by Customer (or any relevant Customer's Affiliate) in obtaining the Goods and/or Services in substitution from another supplier;
- (iv) claim the penalty for Supplier's default with the date(s) as agreed in the Contract. The penalty shall be payable at a rate specified in the Contract. Supplier shall pay the penalty upon written demand or upon receipt of an invoice by Customer. The agreed penalty shall not affect Customer's claim for damages whatsoever nor shall the payment of such penalty relieve Supplier from any of its obligations and liabilities under the Contract. Customer shall be entitled to reserve the right to assert the penalty up to the time of final payment.
- (v) claim (in addition to the penalty under this Clause 7.4 (iv), if any) for any (exceeding) additional costs, losses or damages incurred whatsoever by Customer (or by any relevant Customer's Affiliate) which are reasonably attributable to Supplier's failure to comply with the agreed date(s);

7.2 Customer may select one or more of the aforementioned remedies. Claiming costs or damages under any of Clauses 7.1

(iii) to (v) shall not exclude Customer from claiming any other costs or damages incurred in connection with a delay.

7.3 In case applicable law requires Customer to grant a grace period to Supplier prior to claiming any of the rights and remedies under this Section 7, these shall only apply after Customer has set such grace period to Supplier and Supplier has not delivered or performed, as the case may be, within such period.

## 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 are new and unused at the date of Delivery and remain free from defects during the warranty period.

8.3 The warranty period is twenty four (24) months from Delivery and in case of Services: from complete performance thereof, or as otherwise set out in the Contract.

8.4 In case of breach of any warranty which is not remedied within forty eight (48) hours from Customer's notification or such longer or shorter period reasonably to be granted by Customer in view of the circumstances involved, or in other cases where the applicable law waives the requirement to set a time period (grace period) for remedy, Customer is entitled to enforce any or all of the following remedies at its discretion and at Supplier's expense:

- 8.4.1 to give Supplier an opportunity to carry out any additional work necessary to ensure that the Contract is fulfilled, i.e. in particular immediate repair or replacement of the defective Goods and/or Services;
- 8.4.2 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;
- 8.4.3 to refuse any further Goods and/or Services by the Supplier;
- 8.4.4 to require Supplier to indemnify and hold harmless Customer (and any relevant Customer's Affiliate) for such damages as may have been sustained by Customer (or any relevant Customer's Affiliate) as a result of Supplier's breach of the Contract;

8.4.5 to terminate the Contract with immediate effect or rescind the Contract; in such event of termination

8.4.5.1 Customer has no obligation to compensate or further pay (including paying for the Goods and/or Services which have been rejected); in case Customer chooses to rescind from the Contract 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; and

8.4.5.2 Customer may source equivalent replacement goods and/or services from an alternative supplier; any resulting additional costs are to be borne by Supplier.

8.5 The remedies as per Clauses 8.4 shall be at Supplier's expense (including, but not limited to, transportation and

installation, removal or assembly and dismantling costs) and risk.

8.6 In case of a breach of any warranty, the warranty period shall be extended by a time period which is equal to the time period for the performance of the remedial work by Supplier. The same warranty period extension shall apply if the defective Goods or Services cannot be used for the intended purpose due to a defect. Any other provisions leading to an extension, starting anew or halt of the warranty period shall remain unaffected.

8.7 The rights and remedies available to Customer under the Contract are cumulative and are not exclusive of any rights or remedies Customer may have as a result of defects whatsoever.

## 9. INTELLECTUAL PROPERTY RIGHTS

9.1 Without prejudice to Clause 9.2, Supplier hereby grants Customer and its nominated Affiliates, or undertakes to procure that Customer is granted, a worldwide, irrevocable, transferable, sub-licensable, non-exclusive, royalty-free license to use the Intellectual Property Rights in the Goods, including Embedded Software, if any, or other software to be provided to under the Contract, if any.

9.2 Supplier herewith assigns to Customer (or will assign to Customer's nominated Affiliate) full ownership rights in any Intellectual Property Rights in Goods resulting from Supplier's Services. Supplier further agrees, upon Customer's request and at its cost, to take all further steps necessary to perfect Customer's ownership (or that of its nominated Affiliate) to the Intellectual Property Rights.

9.3 Intellectual Property Rights in any Goods developed by or licensed to Supplier prior or outside a Contract (hereinafter referred to as the "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 a worldwide, irrevocable, transferable, sub-licensable, 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 any open source software contained in or used by Embedded Software, if any, and request for this the 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. Supplier shall indemnify and hold Customer harmless from and against all third party claims in view of the use of open source software in the Goods or Services.

9.5 If any claim is made against Customer (or any relevant Customer's Affiliate) 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, Customer's relevant Affiliates 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 with non-infringing equivalents. Otherwise, Customer is entitled to terminate the Contract with immediate effect and to reclaim all sums which it, or any Customer's relevant Affiliate, has paid to Supplier under the Contract.

## 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 (available at <https://global.abb/group/en/about/supplying/material-compliance>, under the section "ABB List of Prohibited and Restricted Substances") as well as the ABB Policy on Conflict Minerals (available at <https://global.abb/group/en/about/supplying/responsible-minerals>). The Supplier shall provide Customer with the relevant documents, certificates and declarations upon Customer's request. 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 shall 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 Supplier represents and warrants that no goods, materials, equipment, components, parts, technology, or services that are included in, incorporated into, or provided in connection with the Goods and/or Services originate in any country or region which is subject to an embargo maintained by any public authority. 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 (and any relevant Customer's Affiliate) in writing of the particulars of such restrictions.

10.5 Supplier represents and warrants that it is not a person subject to economic or financial sanctions imposed by a public authority (a "Sanctioned Person"), including the US Specially Designated Nationals (SDN) and Blocked Persons List. Supplier acknowledges that Sanctioned Persons may include (legal) persons who are not explicitly included on any sanctions list maintained by a public authority, but also persons who are directly or indirectly owned 50 percent or more in the aggregate by one or more Sanctioned Persons. Supplier further represents and warrants that no Sanctioned Person has any property interest, financial interest, or other interest in the Goods and/or Services and that the delivery and/or provision of the Goods and/or Services shall not involve the transferring, paying, exporting, or withdrawing of any property or interests in property of any Sanctioned Person.

10.6 Each Party warrants that it will not, directly or indirectly, and that it has no knowledge that other persons will, directly or indirectly, make any payment, gift or other commitment to its

directors/officers or employees, to business partners, public officials or any third party in a manner contrary to applicable laws (including but not limited to German Law, 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). Furthermore, each Party represents that it will 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.

10.7 Supplier is obliged to comply with the current version of the ABB Supplier Code of Conduct (available at <https://global.abb/group/en/about/supplying/code-of-conduct>). Furthermore, the Supplier is obliged to fulfill the due diligence requirements of the German Supply Chain Due Diligence Act (LkSG). This also applies if Supplier itself does not fall within the scope of the LkSG – in this case with the provision that the fulfillment of the obligation to submit a declaration of principle and the obligation to file reports are at the discretion of the Supplier.

10.8 Supplier shall endeavor to ensure that also its suppliers and subcontractors comply with the ABB Supplier Code of Conduct and bind their respective suppliers and subcontractors accordingly.

10.9 Supplier grants the Customer and/or an Affiliate of the Customer the right to carry out trainings for employees of the Supplier once a year, and/or if there is a relevant reason, to enforce the obligations according to sections 10.7 and 10.8. The Customer and/or an Affiliate of the Customer can carry out the training themselves or through a third party.

10.10 The Customer and/or an Affiliate of the Customer is entitled, at its own expense, to have its own employees or third parties carry out on-site audits and/or other suitable measures to check once a year, and/or if there is a relevant reason, whether the Supplier has fulfilled the obligations under Sections 10.7 and 10.8. The Supplier must grant reasonable access to the relevant areas and documents. Unless otherwise agreed, the inspection may only take place during the Supplier's business hours and may not impair the Supplier's business processes.

10.11 A relevant reason within the meaning of clauses 10.9 and 10.10 exists if the Customer has to reckon with a significantly changed or significantly expanded risk situation at the Supplier or at Supplier's Subcontractors.

10.12 ABB has set up various reporting channels through which the Supplier and its employees can report suspected violations of applicable law (including the LkSG), principles or codes of conduct like the ABB Supplier Code of Conduct. These reporting channels can be found at <https://global.abb/group/en/about/integrity/reporting-channels/how-do-i-report>. Supplier ensures that these reporting channels are used to report suspected violations.

10.13 Any breach of any of the obligations contained in Sections 10.6 to 10.9 shall be deemed a material breach of the Contract. A material breach by either Party entitles the other

Party to terminate the Contract immediately and without prejudice to any other rights or remedies under this Contract or applicable law. This also applies if the Supplier refuses, frustrates or impedes training or further education according to Section 10.9 or an examination according to Section 10.10 and does not immediately make it possible in full at the request of the Customer. The Supplier is not entitled to any compensation, damages or other claims arising from or in connection with such a termination.

10.14 Irrespective of the provision in Section 10.13, Customer can terminate the Contract with immediate effect under the conditions of Section 7 (3) LkSG and break off the entire business relationship with Supplier. Supplier shall not be entitled to any compensation, damages or other claims arising out of or in connection with such termination or discontinuation.

10.15 Notwithstanding anything to the contrary in the Contract, Supplier shall fully indemnify and hold Customer harmless from and against any and all liability, damages, costs and expenses arising out of any breach of any of the obligations contained in this Clause 10 and, if applicable, the termination of the Contract resulting therefrom or from arising export restrictions which were concealed by the supplier.

## **11. CONFIDENTIALITY, DATA SECURITY, DATA PRIVACY**

11.1 Supplier shall keep in strict confidence all Customer Data. This shall apply whether such data are received 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 To protect the Customer Data, Supplier shall apply appropriate safeguards, adequate to the type of Customer Data to be protected, against the unauthorized access or disclosure of such 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, legal 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

<https://global.abb/group/en/about/supplying/cybersecurity>) or as 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 in the case of other arrangements in 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 keep up to date at its own cost adequate protection software and security patches for all computers and software utilized in connection with providing the Goods and/or Services.

11.5 Supplier shall inform Customer (and any relevant Customer's Affiliate) without undue 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 Data Privacy

11.7.1 If Customer (and its Affiliate) discloses Personal Data to Supplier, or the Customer otherwise has access to it under the Contract, Supplier shall comply with all applicable data protection laws and regulations.

11.7.2 The Supplier shall take appropriate technical and organizational measures to ensure a level of protection that is appropriate in relation to the type and scope of the Customer data concerned and the circumstances and purposes of the processing.

11.7.3 Supplier will use all reasonable endeavors to provide its employees that will be involved in the delivery of Goods or the provision of Services for Customer with the ABB Data Protection Notice for Business Partners (available at <https://new.abb.com/privacy-policy/de/datenschutz-deutschland>).

11.7.4 Supplier acknowledges that processing Personal Data in accordance with the Contract may require entering into an additional data processing agreement or other data protection agreement with Customer or its group companies; especially if such regulations are not already contained in the Contract. In such a case, the Supplier will, at the request of the Customer, immediately conclude such data protection agreements as are prescribed by mandatory statutory provisions or a competent data protection authority or another competent authority and are specified accordingly by the Customer.

## 12. LIABILITY AND INDEMNITY

12.1 Without prejudice to any applicable mandatory law, Supplier shall indemnify and hold harmless Customer and/or any relevant Customer's Affiliate from any liability, damage, cost, losses or expense incurred by Customer (or such Customer's

Affiliate) as a result of Supplier's breach of the Contract; and to the extent that the respective liabilities, damages, cost, losses or expenses were caused by or arise from culpable acts or omissions of Supplier, unless caused by Customer's (or relevant Customer's Affiliate's) gross negligence or intentional act. Supplier shall, without any limitations, indemnify and hold harmless Customer and each relevant Customer's Affiliate for any claim made by a third party against Customer in connection with the Goods and/or Services relating to a breach by Supplier, 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 (or any relevant Customer's Affiliate) against any such third party claims.

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

12.3 Supplier shall maintain in force, and upon request provide evidence of, adequate liability insurance as well as statutory worker's compensation/employer's liability insurance with reputable and financially sound insurers, which however will not relieve Supplier from any liability towards Customer (or any relevant Customer's Affiliate). The insured amount cannot be considered as limitation of liability.

12.4 Customer reserves the right to set off any claims under a Contract against any amounts owed to Supplier, also from other legal relationships.

## 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 (provided that such Goods and/or Services otherwise comply with the Contract) and proven direct costs reasonably incurred by Supplier for 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 or rescind the Contract with Clauses 8.4.5 through 8.7 being applicable.

13.3 Both Parties may terminate the Contract with immediate effect by notice in writing in the event that in view of the other Party (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 or an application to open insolvency proceedings on its assets is filed or being commenced or being disclaimed due to lack of mass; 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 the other Party by reason of its insolvency or in consequence of debt; or (iv) there is a change of control of Supplier.

13.4 Upon termination under Clause 13.1 through 13.3 the other

Party shall immediately at its own cost return to the terminating Party (or Customer's relevant Affiliate) its property (including any Customer Data or other data as per Clause 11.1 as well as documentation, and Intellectual Property Rights) then under the other Party's control and provide the terminating Customer (or its nominated Affiliate) with the complete documentation about the delivered Goods and/or Services.

13.5 The ABB GTC shall not limit either Party's right provided by applicable law to terminate the Contract for cause ("*aus wichtigem Grund*"). If the applicable law in such cases also provides for a partial termination, the termination of the whole Contract shall only be admissible if the important reason requires the termination of the whole Contract (as opposed to partial termination).

13.6 Any termination or rescission of the Contract shall be in writing.

#### 14. FORCE MAJEURE

14.1 Neither Party (nor any Customer's Affiliate receiving the Goods and/or Services) will be liable for any delay or failure to perform its obligations under the Contract if the delay or failure results from an event of Force Majeure. Force Majeure means an event that was not foreseeable by the affected Party (or Customer's Affiliate) at the time of execution of the Contract, is unavoidable and outside the reasonable control of the affected Party (or Customer's Affiliate), provided that it cannot overcome such event despite all reasonable efforts, and that it provides notice to the other Party (and, in the case of Supplier being affected, to any relevant Customer's Affiliate) within ten (10) calendar days from occurrence of the Force Majeure event or of the time Supplier becomes aware of such event or should reasonably be aware thereof, whichever occurs later.

14.2 If a Force Majeure event exceeds thirty (30) calendar days, either Party may terminate the Contract with immediate effect by written notice without liability. Each Party shall use reasonable efforts to minimise the effects of the Force Majeure event.

#### 15. ASSIGNMENT AND SUBCONTRACTING

15.1 Supplier may neither assign, transfer nor subcontract the Contract, nor any parts thereof (including any claim against the Customer) to any of its Affiliates or to any successor in title holding that portion of the business of the group of companies of Supplier without Customer's prior written consent acquires a customer to whom the relevant contract relates.

15.2 Supplier agrees that Customer may assign, transfer or subcontract the Contract or any part thereof to its group companies or any successor in title that acquires that part of the affiliate from Customer to which the relevant Contract relates. This also applies accordingly to the group companies taking over or the legal successor.

#### 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 (including Customer's Affiliates. Supplier's reply, correspondence, information or documentation related to the Contract must be provided in the language used in the Contract, unless the Customer approves a different language version in writing.

#### 17. WAIVERS

Failure by Customer (or Customer's Affiliate) to enforce or exercise any term of the Contract does not constitute a waiver of such term and does not affect any right to enforce such or any other term therein contained at a later date.

#### 18. GOVERNING LAW, ARBITRATION

18.1 The Contract is governed by the laws of Germany under exclusion of

18.1.1 §§ 305 to (and including) 310 of the German Civil Code ("*Bürgerliches Gesetzbuch*");

18.1.2 conflict of law rules of the German law, and

18.1.3 the United Nations Convention on International Sale of Goods.

18.2 Arbitration

18.2.1 All disputes arising out of or in connection with the Contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law.

18.2.2 The arbitral tribunal shall be comprised of a sole arbitrator, unless the Parties agree in writing on three members.

18.2.3 The seat of the arbitration is the registered office of the Customer.

18.2.4 The language of the arbitration shall be German.

#### 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 Parties shall agree on valid and enforceable provisions which will come as near as possible to the economic effect of the invalid or unenforceable term.

#### 20. ENTIRETY, ORDER OF PRECEDENCE

20.1 The Contract (incorporating these ABB GTC), and any documents incorporated into an Order or other agreement (including by reference) constitute the entire agreement between the Parties and replaces any prior agreement between them with regard to its subject.

20.2 In the event of any inconsistency between documents comprising the Contract, the following order of precedence shall apply:

- (i) any Contract established by the Customer including deviations from the ABB GTC to the extent they are explicitly identified in that Contract);
- (ii) these ABB GTC.



20.3 For the avoidance of doubt, any other terms and conditions set out, or referenced, in any other document than referenced in this Section 20 shall not apply, nor form part of any Contract.

## 21. RELATIONSHIP OF THE PARTIES

21.1 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 of any relevant Customer's Affiliate) or so as to have any kind of partnership with Customer or any Customer's Affiliate, and Supplier must not represent itself as or act on behalf of Customer or its Affiliates.

21.2 The Contract does not imply any employment relationship between Customer (or any Customer's Affiliate), and Supplier, or between Customer (or any Customer's Affiliate) and Supplier's employees assigned to the execution of the Contract. Customer and its Affiliates remain free of any responsibility or liability for any labour, social security or tax matter with respect to Supplier and its employees assigned to the execution of the Contract.

## 22. ELECTRONIC SIGNATURE

The Parties acknowledge electronic signature (e. g. Adobe Sign, DocuSign or similar tools or by other means of scanned signatures by authorized persons) to be sufficient and binding for entering into the Contract as well as for any documents related to the Contract, including, without limitation, documents for which the Contract requires written form, or which require to be signed by the Parties.

