

Formation and Content of Contract

The Purchase Order together with its attachments and other documents incorporated into the Contract by referen

Unless otherwise stated in the Purchase Order, the contract (the "Contract") shall consist of the following do

- * The Purchase Order together with Supplier's Purchase Order acknowledgement
- * The PRPC
- * These Alstom and ABB General Terms & Conditions including its Appendices
- * The Client's Specification, if applicable
- * The Master Technical Specification incorporated into the Contract by reference in the Purchase Order
- * Quality Assurance plans including test and inspection requirements, incorporated into the Contract by refe
- * Environmental, Health & Safety requirements, incorporated into the Contract by reference in the Purchase O
- * Shipping, packing and marking standards and instructions, incorporated into the Contract by reference in t
- * Other documents incorporated into the Contract by reference in the Purchase Order
- * Supplier's proposal

Terms and conditions of contracts of the Parties shall not apply even if the Parties or one of the Parties hav

The Contract may not be modified except by a written change order issued by Purchaser in accordance with Claus

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accepting or acknowledging the Purchase Order (including its attachments and other documents incorporated into

The invalidity, in whole or in part, of any provision of the Contract shall not affect the remainder of such p

2. Definitions and Interpretations

* **2.1 Definitions**

- * "ALSTOM Affiliate" means any company being a member of the group of companies of ALSTOM S.A., Paris.
- * "ABB Affiliate" means any company being a member of the group of companies of ABB Ltd, Zurich.
- * "Applicable Legislation" means, without prejudice to Clause 18.1, any relevant laws, regulations, code
- * "Client" means the Purchaser's customer to whom the Work will be ultimately delivered by the Purchaser
- * "Contract" shall have the meaning given to it in Clause 1, it being understood that the subject of the
- * "Defect" means (i) defect and deficiency of the Unit(s) in design, workmanship or material, or (ii) no
- * "Parties" means the Purchaser and the Supplier; "Party" means either of them, as the context requires.
- * "PRPC" means the project-related purchasing conditions issued by the Purchaser which shall be limited
- * "Purchase Order" or "PO" means the purchase order issued by the Purchaser and accepted by Supplier as
- * "Purchaser" means ALSTOM (Switzerland) Ltd or any ALSTOM Affiliate named as Purchaser in the Purchase

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"Site Services" means such services related to the Unit(s) as will, if ordered by the Purchaser, be performed

"FAT" means the tests as specified in the Technical Specification, including and limited to the delivery of al

"SAT" means the tests as specified in the Technical Specification, including and limited to the delivery of al

"Supplier" means ABB Switzerland Ltd or any ABB Affiliate named as Purchaser in the Purchase Order.

"Master Technical Specification" means the document of the same name incorporated into the Contract by referen

"Client Specification" means the portions of the Client's specification relevant for the Work, as amended by m

"Technical Specification" means the Master Technical Specification and Client Specification.

"Unit" means the functional unit consisting of the equipment, materials, works, parts, manuals, drawings, docu

"Equipment" means the scope of supply consisting of one or more Units.

"Services" means the Site Services, the term "Services" shall include any changes made thereto pursuant to Cla

"Work" means the Equipment and, if ordered by the Purchaser, the Services, to be provided by the Supplier, all

"Site" means the place where the Site Services, if any, will be performed by the Supplier.

"Client Contract" means the contract entered into between the Purchaser and the Client for the delivery of the

2.2 Interpretations

Reference to Clauses shall mean clauses of the Contract unless otherwise specified or unless the context clear

Clause headings used in the Contract are for ease of reference only and do not form part of the Contract or it

The term "including" shall be construed as "including, but not limited to", unless expressly stated to the con

The interpretation of international trade terms shall be in accordance with Incoterms 2000, unless otherwise s

3. Work

3.1 The Work

The Supplier shall perform the Work in its entirety in the manner and at the times set forth in the Contract.

Save where the Contract expressly provides otherwise, the cost of performing the Work shall be borne exclusive

The Work shall include any and all works, materials, equipment, parts, drawings, documents, and other supplies

The Supplier's proposal for the delivery of the Unit(s) shall include the performance of the SAT provided the

The Supplier represents that it has acquainted itself with all facts, data, documents, circumstances, requirem

The Supplier shall be responsible for its own interpretation of any documentation and information received and

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in connection with the Contract shall in any way release the Supplier from the obligation to review any such d

Notwithstanding anything to the contrary, the Supplier shall in no event have any responsibility for any Site

****3.2 Changes****

The Purchaser shall have the right to require the Supplier to make any changes in the Work.

If in the Supplier's opinion such changes will cause an increase or decrease in the cost of or time required f

Notwithstanding that a change order may not have been finalized, if instructed to do so by the Purchaser, the

If after the date of the acknowledgement of the Purchase Order the Supplier becomes aware of the introduction

****3.3 Hazardous Goods****

Unless otherwise agreed in writing, the Supplier is to be supplied to the Purchaser will not contain arsenic,

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safety in handling, transport, storage or use, the Supplier shall prior to their delivery furnish to the Purch

In particular the Supplier shall provide to the Purchaser in writing all such data, instructions and warnings

The Supplier shall indemnify the Purchaser against any and all liabilities, claims and expenses which may aris

Free-Issue Materials and Tooling

Where the Purchaser for the purpose of the Contract issues materials (including equipment, components, tooling

Execution of the Work

Compliance

The Supplier warrants that the Unit(s) delivered and Services rendered hereunder are in strict compliance with

The Work shall be performed in accordance with good international power engineering practice, shall conform to

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proper operation. Any Unit or any Service which do not comply with all of the above shall be considered t

5.1.3 Supplier further agrees to provide at Purchaser's request certificates or other documentation relating t

5.2 **Inspection and Testing**

5.2.1 The Purchaser, the Client and any other properly interested third party (other than competitors of the S

5.2.2 The Supplier shall give to the Purchaser at least ten (10) working days' advance notice in writing of te

5.2.3 The Unit(s) shall not be dispatched to the Purchaser without an inspection and release by the Purchaser,

If the Contract includes the carrying out of tests on the Unit(s) after its (their) receipt by the Purchaser,

5.2.4 Inspection and testing carried out in accordance with this Clause shall not relieve the Supplier of any

5.2.5 The Supplier shall keep the test records available to the Purchaser and the Client as per the applicable

5.3 **Drawings and Other Submittals**

The Supplier shall furnish all required documentation in accordance with the Contract and in the English langu

The Purchaser's approval, if required according to the Contract, of Supplier's drawings, calculations and othe

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Purchaser shall furnish the documents set out in the Master Technical Specification to Supplier on the dates s

****6. Rejection, Warranties and Remedy of Defects****

****6.1 Rejection****

If at any time prior to the expiration of the applicable warranty period (as defined in Clause 6.3) any Unit o

****6.2 Warranties and Representation****

Supplier warrants that the Work will be free from all Defects and will be fit for the purpose as specified in

Supplier warrants that the Unit(s) provided pursuant to this Contract will be free of title claims, and Suppli

Supplier represents that it has not paid any commission, fees or grant any rebates to any employees or officer

****6.3 Warranty Period****

The warranties given under Clause 6.2 for the Unit(s) shall apply for a period of twenty-four (24) months from

The warranties given under Clause 6.2 for the Services shall apply for the period set forth in the preceding P

****6.4 Defects****

If Purchaser notifies Supplier in writing that any part of a Unit or Service is found at any time prior to exp

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of the Unit and/or to reperform the defective Service, at its expense, within such reasonable time as will be

For any repairs or replacements of the defective Unit Supplier shall perform at its cost such tests as reasona

Any repaired or replaced part of the Unit shall carry warranties on the same terms as set forth herein for a p

Any reperformed Service shall carry warranties on the same terms as set forth herein for a period set forth in

If the Supplier fails to remedy any Defect in the manner and at the time or times herein provided the Purchase

(a) itself or by a third party to take such action as may be required to cure the Defect expeditiously at Supp

(b) to terminate, with respect to the defective Unit, the Contract pursuant to Clause 17.2 and to require Supp

6.5 Warranty Exclusions

The Supplier shall not be responsible for any Defect to the extent that the Defect is caused by any act or omi

6.6 Exclusivity of Remedies

Notwithstanding anything to the contrary contained or implied in the Contract, the Purchaser's rights and remedies shall be limited to those set forth in this section.

7. Price Basis

7.1 Contract Price

Purchaser undertakes to pay to Supplier for the Work the price set forth in the Purchase Order. Where the Purchase Order is silent, the Contract price shall be the price set forth in the Purchase Order.

Unless otherwise agreed elsewhere in the Purchase Order, the Contract price is based on an EXW delivery with transportation to the destination.

7.2 Taxes

The Contract price includes all taxes, fees or duties levied in connection with the delivery of the Equipment.

If any taxes, customs duties, fees and duties are levied after the EXW delivery of the Unit(s) in accordance with the applicable laws, the Supplier shall be responsible for the payment of such taxes, duties, fees and duties.

8. Terms of Payment and Security

8.1 Terms of Payment

The terms of payment applicable to the price of the Equipment and the Services shall, be based on the Appendix A.

Should the issuance of the PAC be delayed by more than three (3) months after the scheduled date of issuance of the PAC, the Supplier shall be responsible for the payment of the interest on the outstanding amount.

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All payments shall be made to Supplier within sixty (60) days after receipt of the Supplier's invoice accompan

Notwithstanding anything to the contrary contained or implied in the Contract, the Purchaser shall be under no

The Purchaser shall not be entitled to set-off any amounts of money owing to Supplier pursuant to the Contract

8.2 Performance Bond

Upon signing of the Contract the Supplier shall provide a guarantee as set forth in Appendix A attached hereto

9. Delivery and Transfer of Risk and Title

9.1 Delivery

Unless otherwise stated in the Contract, the Unit(s) shall be delivered EXW, agreed place of manufacture (as p

The delivery date(s), the date of completion of the Work or, in the case of a service being performed at regul

9.2 Transport Documents

The Supplier shall, subject to and in accordance with the Purchaser's Shipping, packing and marking standards

provide an invoice and such other documentation as has been agreed by the Parties.

The Supplier shall immediately notify Purchaser of any known documentation errors and shall reimburse to Purch

9.3 Transportation

The Purchaser shall be responsible for transporting the Unit(s). If the specified accompanying documents are n

9.4 Packing and Marking

Packing and marking will be in accordance with the Purchaser's Shipping, packing and marking standards and ins

9.5 Importation

If the Unit(s) will be delivered to a destination country that has a trade agreement or a special import/custo

9.6 Origin

The Supplier shall manufacture, procure and deliver the Unit(s) from the agreed places of origin.

The Supplier shall avoid any export or import constraint violation and shall declare the origin of the Unit(s)

9.7 Transfer of Title

Save as expressly otherwise provided in the Contract, title to the Unit(s) to be supplied by the Supplier shal

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9.8 Transfer of Risk

Risk of loss of and damage to the Unit(s) delivered in accordance with the Contract shall pass to the Purchase

9.9 Core and Custody

Goods belonging to or provided by the Purchaser, which are in the Supplier's custody for any purpose, shall be

9.10 Acceptance

Prior to shipment, the Supplier shall perform the Factory Acceptance Test (FAT) to demonstrate readiness and f

Subject to and in accordance with the Contract, the Supplier undertakes to perform the Site Acceptance Test (S

The Supplier shall invite the Purchaser to the FAT and/or SAT (collectively the "Acceptance Tests") three week

If the Purchaser declines to take part in the FAT and/or SAT or fails to attend the test after due notificatio

If the FAT and/or SAT fail for reasons attributable to the Supplier, the Supplier shall be liable to perform r

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TO:

[UNREADABLE]

FROM:

[UNREADABLE]

DATE:

[UNREADABLE]

SUBJECT:

[UNREADABLE]

Insignificant Defects"), terminate the Contract pursuant to Clause 17.2 for Supplier's material breach by noti

The Supplier shall bear all costs incurred in repeating the FAT.

In case the SAT has to be repeated for reasons attributable to the Supplier, the Supplier shall bear its own m

In case the SAT has to be repeated for reasons attributable to both, the Supplier and the Purchaser, each Part

Upon successful completion of the Acceptance Tests the Work shall be deemed accepted by the Purchaser, and the

If any of the aforesaid Acceptance Tests shows that the Unit(s) is/are substantially in conformance with the r

****10. Delayed Delivery****

The Supplier shall notify the Purchaser immediately in writing if the delivery of a Unit or the performance of

Unless the delay is the fault of the Purchaser, the cost of the acceleration measures including transportation

If the Supplier fails to deliver any Unit as scheduled due to reasons attributable to the Supplier, the Purcha

If the delivery of all or any portion of documents as listed in Appendix B is delayed beyond the respective de

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damages at the rates and up to the maximum amount as set forth in Appendix B hereof.

The Parties agree that such rates and maximum amounts are reasonable pre-estimates of the damages the Purchase

Notwithstanding anything to the contrary contained or implied in the Contract, the liquidated damages set forth

11. Liabilities and Indemnities

11.1 Indemnification

Supplier shall indemnify and save harmless the Purchaser, its officers, employees, servants or agents at all times

11.2 Economic Loss

Notwithstanding anything to the contrary contained or implied in the Contract, but except (i) for the payment

The Supplier shall have no obligation to indemnify the Purchaser against any claims by the Client relating to

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11.3 Product Liability

The Supplier agrees to indemnify the Purchaser and the Client, subject to and in accordance with the applicabl

11.4 Limitations of Liability

Notwithstanding anything to the contrary contained or implied in the Contract, the Supplier's aggregate liabil

The Supplier's aggregate liability for all claims of any kind, whether by way of indemnity, breach of statutor

11.5 Precedence

This Clause 11 shall govern and take precedence over any other provision elsewhere in the Contract. Subject to

12 Insurance and Loss or Damage in Transit

12.1 Transport insurance

Transport insurance will be taken out or arranged by the Purchaser, it being agreed that in the insurance poli

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The Supplier shall in no event be liable for any damage to the Unit(s) which may occur during transport except

The Purchaser shall claim all damages due to inadequate loading and lashing by the Supplier with its transport

Insurance Claims

The Purchaser shall be responsible for the transportation of the Unit(s) (Clause 9.3). It shall advise the Sup

Supplier Insurance

The Supplier shall maintain:

(a) Comprehensive General Liability insurance in the amount of Euro 3,000,000 (three million Euros) combined s

(b) Workers Compensation Insurance in accordance with statutory limits; and

(c) Property Insurance covering the full replacement value of all property and services owned, rented or lease

Upon request, the Supplier shall furnish to the Purchaser a Certificate of Insurance completed by its insuranc

Force Majeure

If performance of the Contract is delayed by any act of God, strike (other than a strike which is specific to

If the delay continues for more than [UNREADABLE] days after written notice of the delay has been given to the

In the event of termination under this Article 13, all obligations hereunder shall cease and each Party shall

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Upon the occurrence of an event of Force Majeure the Parties shall take all reasonable steps to reduce the del

14. Assignment and Subcontracts

The Contract shall not be assigned or subcontracted by the Supplier as a whole. The Supplier shall not assign

The Purchaser may assign the Contract to any ALSTOM Affiliate subject to prior written notice to the Supplier.

The Purchaser may not assign the Contract to the Client, except as otherwise mutually agreed upon in the PRPC.

15. Intellectual Property Rights

15.1 Proprietary Rights

All information and know-how including drawings, specifications and other data provided by the Purchaser in co

Unless specifically requested by the Purchaser in the Contract any inventions, patents, copyrights, design rig

However and independently of the existence of the aforementioned intellectual property rights, the Purchaser s

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Work and any modification thereof exclusively for the particular plant forming the basis for the Technical Spe

15.2 **Patent Infringement**

Supplier represents and warrants that the Unit(s) performed pursuant to this Contract and the sale or use ther

15.3 **Advertising**

Supplier shall not issue any publicity or advertising relating to this Contract without Purchaser's prior writ

16. **Suspension**

The Supplier shall have no right to suspend the performance of the Work, unless the Purchaser, for any reason

The Supplier shall discontinue performance under the Contract to the extent specified in the notice of suspens

Save where the Purchaser has suspended the Supplier's breach and/or by reason of Force Majeure, the Purchaser

In the event of a suspension by the Purchaser, a change order shall be issued in accordance with Clause 3.2, u

17. Termination for Convenience or Breach

17.1 Termination for Convenience

Purchaser may terminate all or any part of this Contract at any time by written notice to Supplier. Upon termi

Supplier shall take all reasonable steps to minimize its costs and losses and the Purchaser's liability under

17.2 Termination for Breach

Purchaser may terminate the whole or part of the Contract by written notice without prejudice to any other rig

- * the Supplier is in material breach of its obligations (including non-compliance with Applicable Legislatio
- * the Supplier fails to deliver the Units due to reasons attributable to the Supplier by the date that the m
- * if the Supplier fails to make sufficient progress and such failure endangers the timely completion of the
- * the Supplier becomes bankrupt or insolvent or makes an arrangement with its creditors or has a receiver or

In the event of termination under this clause, the Supplier will be liable to the Purchaser for all liabilitie

- * the Purchaser shall have the right to terminate this Contract immediately by giving written notice to the
- * the Supplier shall cease all work under this Contract immediately upon receipt of such notice.

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value the Work performed as of the date of termination and certify the amount (the "Certified Work").

The Purchaser shall not be liable to make any further payment to Supplier until the Completion Cost have been

****17.3 Termination for Significant Breach****

If the Supplier's breach is so significant that the Work or part thereof cannot be used for its purpose specif

****17.4 Supplier's Continuing Obligations****

The Supplier shall continue performance of those portions of the Contract not terminated.

Upon termination and at Purchaser's request, Supplier shall:

- (i) promptly turn over to Purchaser any or all portions of the Equipment whether or not completed, as well as
- (ii) assign to Purchaser all subcontracts and vendor contracts relating to the performance of the Contract to
- (iii) do and procure all things necessary to vest and secure good title in the goods comprising the Work in th

****17.5 Prolonged Force Majeure****

If an event of Force Majeure exceeds a continuous period of six (6) months either Party shall be entitled, upo

****17.6 Termination by Supplier****

The Supplier may terminate the whole or part of the Contract by written notice without prejudice to any other

[No text visible]

17.6.1 the Purchaser fails to make any payment when due which failure continues for more than one hundred eigh

17.6.2 the Purchaser becomes bankrupt or insolvent or makes an arrangement with its creditors or has a receive

In case of termination of the Contract due to Purchaser's default as set forth above the Supplier shall be com

****18. Law and Disputes****

****18.1 Governing Law and Dispute Settlement****

This Contract is governed exclusively by the substantive Swiss law. The application of the "United Nations' Co

Disputes which cannot be resolved in good faith negotiations within sixty (60) days following a written disput

During the pendency of the dispute resolution the Parties shall continue to perform the Contract.

****18.2 Joinder****

If any third party (including the Client) makes any claim against the Purchaser arising from the performance o

****18.3 Decisions****

The decision of any court or arbitration tribunal deciding upon any claim in respect of the Work shall, so far

****18.4 Mediation****

The Parties shall make reasonable efforts to resolve a dispute through mediation and shall in good faith agree

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19. **Entire Agreement**

The Contract constitutes the entire agreement and understanding between the Parties on the subject matter

20. **Waiver**

A Party's exercise or failure to exercise or enforce any right or remedy provided by the Contract shall no

21. **Notices**

All notices, demands or communications related to this Contract shall be in writing and sent by fax or mai

22. **Miscellaneous**

22.1 **Electronic Commerce**

Upon Purchaser's request Supplier agrees to participate in all of Purchaser's current and future electroni

22.2 **Execution Copies**

This Contract may be executed in one or more counterparts, each of which shall have the same force and eff

22.3 Surviving Provisions

The following Clauses shall survive termination or expiration of the Contract and will remain binding upon and

****Late Payments****

If either Party fails to make payment of any amount which it is due to pay to the other Party on the date stat

****Confidentiality****

Each Party may during the term of the Contract disclose certain confidential information to the other Party as

The provisions set forth in this clause will not apply to any information, which now or hereafter (i) is in th

****Spore Parts****

The Supplier undertakes to supply spore parts for the Units, which correspond to the original parts (or where

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Appendix A

Performance Bond (Specimen)

ALSTOM

Performance Guarantee No.

We have been informed that you have concluded on a Contract No. with Messrs. (hereinafter called "Supplier") f

This being stated, we, (name and address of bank), irrespective of the validity and the legal effects of the a

upon receipt of your written request for payment and your written confirmation stating that in your belief Sup

For the purpose of identification, your request for payment and your confirmation have to be presented through

Our guarantee is valid until and expires in full and automatically, should your written request for payment no

With each payment under this guarantee our obligation will be reduced pro rata.

Appendix B

Liquidated Damages

1. Delayed Unit Delivery

If a Unit is delayed beyond its scheduled delivery date due to reasons attributable to Supplier liquidated dam

2. Late Submission of Documents

If the submission of any of the documents listed below is delayed against the scheduled delivery date due to a

(i) If the Contract price is equal to or less than one million Euros (1'000'000 Euros), the liquidated damages

(ii) If the Contract price is greater than one million Euros (1'000'000 Euros), the liquidated damages shall a

The total number of documents with respect to which liquidated damages may become applicable in case of late s

(a) layout drawings / civil guide drawings

(b) site support document for field assembly/erection supervision and for engineering/commissioning handover b

(c) each monthly progress report to be submitted on the 25th calendar day of the Month, except as otherwise sp

(d) each pre-notice of shipment to be submitted not later than 28 days prior to the scheduled shipment date

(e) shipping documents including the packing list to be submitted not later than 7 days prior to shipment date

Notwithstanding anything to the contrary contained or implied in the Contract, the liquidated damages set fort

the Purchaser for any delay in the submission of any or all of the documents.

If the submission of any document(s) other than those listed above is (are) delayed as against the scheduled d

3. Maximum Amount

The total amount of liquidated damages for delayed delivery of the Unit(s) and late submission of documents is

General Conditions

(a) Delivery of an incomplete Unit or submission of incomplete documents specified above shall be deemed a lat

(b) Delivery of defective Units or Services or submission of defective documents specified above shall be deem

(c) Unless otherwise agreed in the Contract, liquidated damages are payable to the Purchaser within sixty (60)

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Appendix C

Terms of Payment

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