

ALSTOM Plant Operations Business

Annex A: Alstom / ABB General Terms & Conditions

1. Formation and Content of Contract

The Purchase Order together with its attachments and other documents incorporated into the Contract by reference in the Purchase Order constitutes an offer by Purchaser to have the Work specified therein performed by Supplier upon the terms and conditions, at the price(s), and within the period of time stated therein. Supplier shall indicate its acceptance of the offer by execution and return of the acknowledgment within seven (7) working days after receipt of the Purchase Order. If Supplier fails to notify Purchaser within this period of whether it accepts or objects to the Purchase Order, the Purchase Order is deemed accepted by Supplier, provided the Purchase Order, together with its attachments and other documents incorporated by reference into the Contract, substantially conforms to the agreements reached during the negotiations on the Supplier's proposal. Commencement of design, manufacture, delivery, supply of the Unit(s) or performance of the Services or start of invoicing constitutes Supplier's acceptance of the Purchase Order and the documents attached thereto or incorporated by reference into the Contract.

Unless otherwise stated in the Purchase Order, the contract (the "Contract") shall consist of the following documents exhaustively listed and the order of precedence shall be:

- 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 reference in the Purchase Order
- Environmental, Health & Safety requirements, incorporated into the Contract by reference in the Purchase Order
- Shipping, packing and marking standards and instructions, incorporated into the Contract by reference in the Purchase Order
- 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 have not expressly contradicted their application.

The Contract may not be modified except by a written change order issued by Purchaser in accordance with Clause 3.2. No terms, conditions, exceptions or clarifications stated by Supplier in its proposal or in

accepting or acknowledging the Purchase Order (including its attachments and other documents incorporated into the Contract by reference in the Purchase Order) shall be binding unless mutually agreed in writing and expressly incorporated into the Contract.

The invalidity, in whole or in part, of any of the provisions of the Contract shall not affect the remainder of such provision or any other provision of the Contract. To the extent allowable under the law applicable to the Contract, the Parties shall by mutual agreement in good faith replace any such invalid provision by a lawful provision having proximate economic effect.

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, codes and standards, as well as, if applicable, authorizations, permits and licenses, having an effect (i) on the Unit(s) or the design, manufacture or delivery thereof or (ii) on the Services or the performance thereof, and relating in particular to environmental, health and safety matters.

"Client" means the Purchaser's customer to whom the Work will be ultimately delivered by the Purchaser for use and/or which becomes the owner of the Work.

"Contract" shall have the meaning given to it in Clause 1, it being understood that the subject of the Contract may be either an EXW delivery or, alternatively, an EXW delivery and Services.

"Defect" means (i) defect and deficiency of the Unit(s) in design, workmanship or material, or (ii) non-compliance of the Unit(s) or the Services with the Technical Specifications and other requirements of the Contract; "defective" shall be construed accordingly.

"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 Purchaser which shall be limited to deviations from these General Conditions of Purchase or other documents incorporated into the Contract by reference in the Purchase Order.

"Purchase Order" or "PO" means the purchase order issued by Purchaser and accepted by Supplier as set out in Clause 1.

"Purchaser" means ALSTOM (Switzerland) Ltd or any ALSTOM Affiliate named as Purchaser in the Purchase Order.

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"Site Services" means such services related to the Unit(s) as will, if ordered by the Purchaser, be performed by the Supplier on the Site; the Site Services may consist of erection supervision, and/or commissioning support or commissioning supervision, as will be mutually agreed upon in the Contract.

"FAT" means the tests as specified in the Technical Specification, including and limited to the delivery of all documents required therein and due up to this point of time.

"SAT" means the tests as specified in the Technical Specification, including and limited to the delivery of all documents required therein and due up to this point of time.

"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 reference in the Purchase Order, which comprises all of the documentation, drawings, plans and manuals (including documentation, drawings, plans and manuals provided by the Supplier, if accepted expressly in writing by the Purchaser) relating to the Work, including such items as the material, equipment and performance specifications and details of how the Work will be executed.

"Client Specification" means the portions of the Client's specification relevant for the Work, as amended by mutual agreement of the Parties.

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

"Unit" means the functional unit consisting of the equipment, materials, works, parts, manuals, drawings, documents, FAT and other supplies, specified in the Purchase Order, to be supplied by the Supplier; the Unit will be integrated by the Purchaser into the power plant to be delivered by the Purchaser to the Client; the term "Unit" shall include any changes made thereto pursuant to Clause 3.2.

"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 Clause 3.2.

"Work" means the Equipment and, if ordered by the Purchaser, the Services, to be provided by the Supplier, all as set forth in or to be reasonably inferred from the Contract. The term "Work" shall include any changes made thereto pursuant to Clause 3.2.

"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 power plant. The Client Contract shall in no event be an integral part of the Contract.



2.2 Interpretations

Reference to Clauses shall mean clauses of the Contract unless otherwise specified or unless the context clearly requires otherwise.

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

The term "including" shall mean and be construed as "including, but not limited to", unless expressly stated to the contrary in the Contract.

The interpretation of international trade terms shall be in accordance with the Incoterms 2000, unless otherwise stated in the Contract.

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 exclusively by the Supplier.

The Work shall include any and all works, materials, equipment, parts, drawings, documents and other supplies which, while not mentioned in the Contract, are necessary to satisfy the Technical Specification and/or any other relevant Contract document or arise from any obligation of the Supplier set forth in the Contract (except for the procurement of authorisations, permits and licenses, other than (i) working permits which may be required for the performance by its personnel of the Site Services and (ii) the export license, if legally required) relating to the Work (if required) or are to be reasonably inferred therefrom, including anything necessary for the completion and the safe and reliable operation of the Unit(s) in accordance with the Contract and the Applicable Legislation.

The Supplier's proposal for the delivery of the Unit(s) shall include the performance of the SAT provided the performance of the SAT is required according to the Master Technical Specification or is deemed necessary by the Supplier.

The Supplier represents that it has acquainted itself with all facts, data, documents, circumstances, requirements, impediments (if any) and considerations relevant to the Equipment and the Services, and the performance of its obligations as set forth in the Contract, and has established its prices, agreed to the time schedule and agreed to the terms of the Contract accordingly.

The Supplier shall be responsible for its own interpretation of any documentation and information received and gathered by it. In particular, except as otherwise provided for in the Contract, no document or information obtained by the Supplier from the Purchaser

in connection with the Contract shall in any way release the Supplier from the obligation to review any such document and information and to verify the same with the Purchaser, to the extent it is reasonably able to do so, and furthermore to obtain any additional information and data from the Purchaser or from other sources, where appropriate, in order to ensure the prompt and proper execution of the Work.

Notwithstanding anything to the contrary, the Supplier shall in no event have any responsibility for any Site conditions whatsoever, except as otherwise provided for in any document incorporated into the Contract by reference in the Purchase Order.

3.2 Changes

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

If in Supplier's opinion such changes will cause an increase or decrease in the cost of or time required for performance of the Contract or will affect a Contract provision, Supplier shall notify Purchaser promptly but in no event later than fourteen (14) days after the receipt of the Purchaser's change notice, otherwise any claim by the Supplier in respect thereof is deemed waived. If the Supplier claims an increase or decrease in the cost of or time required for the performance of the Work as changed, or requests a modification to a Contract provision, and if and to the extent that the Purchaser considers such claim or request reasonably justified in the circumstances, an equitable adjustment will be made by Purchaser to the price and/or delivery schedule of the Contract (considering the impact on the critical path activities) and/or to the relevant Contract provision(s), by means of a change order. Supplier shall not proceed without a written change order issued by Purchaser authorizing the change.

Notwithstanding that a change order may not have been finalised, if instructed to do so by the Purchaser, Supplier shall, without prejudice to the second Paragraph of Clause 18.1, commence work in relation to the change order and comply with the Purchaser's respective instructions.

If after the date of the acknowledgement of the Purchase Order the Supplier becomes aware of the introduction of any new Applicable Legislation or of any change in Applicable Legislation, it shall inform Purchaser without delay and has the right to request Purchaser to issue a change order in accordance with the provisions of this Clause 3.2.

3.3 Hazardous Goods

Unless Purchaser otherwise agrees in writing, the Unit(s) to be supplied to Purchaser will not contain arsenic, asbestos, lead or any other hazardous substances restricted by law or by good international power engineering practice. If any portion of the Unit(s) to be supplied under the Contract, with the agreement of Purchaser, contain such substances or require any special precautions to be taken to ensure

safety in handling, transport, storage or use, the Supplier shall prior to their delivery furnish to the Purchaser written details of the nature of those substances and the precautions to be taken and shall ensure that before dispatch appropriate instructions and warnings are clearly and prominently marked on the Unit(s) or securely attached to them and on any containers into which they are packed.

In particular the Supplier shall provide to the Purchaser in writing all such data, instructions and warnings as are required to comply with Applicable Legislation relating to the environment, and to health and safety.

The Supplier shall indemnify the Purchaser against any and all liabilities, claims and expenses which may arise as a result of the Supplier's failure to act in accordance with the provisions of this Clause 3.3.

4. Free-issue Materials and Tooling

Where the Purchaser for the purpose of the Contract issues materials (including equipment, components, tooling, patterns, dies, molds, jigs and fixtures and the like) free of charge to the Supplier, such materials shall be and remain the property of the Purchaser. Supplier shall maintain all such materials in good order and condition subject, in the case of tooling, patterns and the like, to fair wear and tear. The Supplier shall use such materials solely in connection with the Contract. Any surplus materials shall be disposed of at the Purchaser's discretion. The material, while in Supplier's custody or control, shall be held at Supplier's risk and damage to or waste of such materials arising from bad workmanship or negligence of the Supplier shall be made good at the Supplier's expense. Without prejudice to any other rights of the Purchaser, the Supplier shall deliver such materials, whether further processed by the Supplier or not, to the Purchaser on demand.

5. Execution of the Work

5.1 Compliance

5.1.1 Supplier warrants that the Unit(s) delivered and Services rendered hereunder are in strict compliance with Applicable Legislation to which the Unit(s) and Services are subject including those dealing with environmental, health and safety matters, provided that for those authorisations, permits and licenses which are required by the Client Contract, the Purchaser has informed the Supplier accordingly. Supplier shall indemnify the Purchaser against all loss, liability and fines incurred as a result of Supplier's failure to so comply.

5.1.2 The Work shall be performed in accordance with good international power engineering practice, shall conform to the applicable codes and standards and to all other requirements of the Contract and shall be fit for purpose specified in the Contract. The Unit(s) shall be delivered complete with all instructions, warnings and other data necessary for safe and

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

- 5.1.3 Supplier further agrees to provide at Purchaser's request certificates or other documentation relating to any applicable legal requirements in form and substance legally required.

5.2 Inspection and Testing

- 5.2.1 The Purchaser, the Client and any other properly interested third party (other than competitors of the Supplier) authorised by the Purchaser shall be entitled to inspect and test the Unit(s), at any reasonable time (including within a reasonable time after delivery of the Unit(s) at the ultimate destination of the Unit(s)) within the business hours of the Supplier, to assess the quality of the Unit(s) and its (their) conformance with the Technical Specification and with other requirements of the Contract.

- 5.2.2 The Supplier shall give to the Purchaser at least ten (10) working days' advance notice in writing of tests, and the Purchaser, the Client and any other properly interested third party (other than competitors of the Supplier) authorised by the Purchaser shall be entitled to attend the tests. The Supplier shall provide the Purchaser with such test certificates and other test documentation as specified in the Contract or as the Purchaser may reasonably require.

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

If the Contract includes the carrying out of tests on the Unit(s) after its (their) receipt by the Purchaser, then the Unit(s) shall not be deemed completed until such tests have been passed as required by the Contract.

- 5.2.4 Inspection and testing carried out in accordance with this Clause shall not relieve the Supplier of any liability nor imply Purchaser's acceptance of the Work.

- 5.2.5 Supplier shall keep the test records available to Purchaser and the Client as per the applicable legal requirements (but in no case for not less than two (2) years after expiry of the warranty period as defined in Clause 6.3).

5.3 Drawings and Other Submittals

Supplier shall furnish all required documentation in accordance with the Contract and in the English language (unless another language is specified in the Contract).

Purchaser's approval, if required according to the Contract, of Supplier's drawings, calculations and other documents shall be given within two (2) weeks after Purchaser's receipt. If the Client's approval is required, Purchaser's approval shall be given within four (4) weeks after receipt of the said documents. Purchaser's approval shall not relieve the Supplier of any responsibility for the Work or for any requirements of the Contract.

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Purchaser shall furnish the documents set out in the Master Technical Specification to Supplier on the dates stated therein. In the event the Purchaser fails to provide the documents on these dates, Supplier has the right to claim for an extension of time in accordance with the provisions of Clause 3.2.

6. Rejection, Warranties and Remedy of Defects

6.1 1 Rejection

If at any time prior to the expiration of the applicable warranty period (as defined in Clause 6.3) any Unit or any Service is found to be defective, Purchaser shall have the rights as set forth in Clause 6.4.

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 the Contract.

Supplier warrants that the Unit(s) provided pursuant to this Contract will be free of title claims, and Supplier will discharge or cause to be discharged any lien or encumbrance filed or asserted at its sole cost and expense within thirty (30) days of its filing or assertion (provided such liens do not arise out of a Purchaser's or Client's act or omission).

Supplier represents that it has not paid any commission, fees or grant any rebates to any employees or officers of Purchaser or Client, it has not entered into any business arrangements with employees or officers working or acting on behalf of Purchaser or the Client likely to result in conflicts of interest between their private financial activities and their part in the conduct of the business, and it has not favoured any employees or officers of Purchaser or Client with gifts, entertainment or any other non-monetary favours or gratuities that might be construed to exceed customary courtesies in accordance with accepted ethical business standards.

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 acceptance of the Work by Purchaser pursuant to Clause 9.10 or thirty-six (36) months from the scheduled date of delivery of the respective Unit pursuant to Clause 9.1 (as such period may be adjusted to appropriately account for delays for which Supplier is responsible), whichever occurs first.

The warranties given under Clause 6.2 for the Services shall apply for the period set forth in the preceding Paragraph of this Clause 6.3.

6.4 Defects

If Purchaser notifies Supplier in writing that any part of an Unit or any Service is found at any time prior to expiration of the applicable warranty period to be defective, then the Purchaser shall, subject to Clause 17.3 or except as otherwise agreed upon, give in the first instance the Supplier the right to replace (by new material) or, at its option, to repair such part

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of the Unit and/or to reperform the defective Service, at its expense, within such reasonable time as will be stipulated by the Purchaser by notice in writing, having regard to the circumstances.

For any repairs or replacements of the defective Unit Supplier shall perform at its cost such tests as reasonably requested by Purchaser to verify conformance to the Contract.

Any repaired or replaced part of the Unit shall carry warranties on the same terms as set forth herein for a period of twenty-four (24) months, calculated, as applicable, from the date of repair or replacement, re- installation or passing of tests (if any). or completion of reperformance. Provided, however, that the warranty period for repaired or replaced part of the Unit shall in no case exceed a period of forty-eight (48) months from the scheduled date of delivery of the Unit pursuant to Clause 9.1 (as such period may be adjusted to appropriately account for delays for which Supplier is responsible).

Any reperformed Service shall carry warranties on the same terms as set forth herein for a period set forth in the preceding Paragraph of this Clause 6.4 calculated from the date of completion of reperformance provided, however, that the warranty period for any reperformed Service shall in no event exceed a period of forty-eight (48) months from the scheduled date of delivery of the Unit to which the Service is related, pursuant to Clause 9.1.

If the Supplier fails to remedy any Defect in the manner and at the time or times herein provided the Purchaser shall have the right either:

(a) itself or by a third party to take such action as may be required to cure the Defect expeditiously at Supplier's cost; or

(b) to terminate, with respect to the defective Unit, the Contract pursuant to Clause 17.2 and to require Supplier to return the portion of the price paid by the Purchaser in respect of the Unit, provided, however, that in the event of (i) a Defect of the Unit which do not prevent the safe and reliable operation and use of the Unit ("minor or insignificant Defect") or (ii) a Defect of the Service, the Purchaser shall not be entitled to terminate the Contract.

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 omission of the Purchaser or any third party (other than Supplier's subcontractors or any affiliate of Supplier), in particular any Defect arising out of or connected with any work carried out by the Purchaser or any third party on or in connection with the Work (including consequences of installation, start up, incorrect operation, incorrect or faulty maintenance, transportation, storage, use of spare parts or material not supplied by the Supplier or any affiliate of Supplier. The Supplier shall, furthermore, not be responsible for normal wear and tear due to operation of the Work.

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6.6 Exclusivity of Remedies

Notwithstanding anything to the contrary contained or implied in the Contract, the Purchaser's rights and remedies for Defects expressly mentioned in this Clause 6 shall be exclusive and shall, therefore, not be in addition to any rights or remedies provided for under the applicable law.

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 Purchaser has issued no variation in scope, specification, quantity or delivery, the prices stated in the Contract are fixed and firm for the duration of the Contract.

Unless otherwise agreed elsewhere in the Purchase Order, the Contract price is based on an EXW delivery with the Unit(s) packed and marked, loaded and lashed in accordance with the Purchaser's Shipping, packing and marking standards and instructions incorporated into the Contract.

7.2 Taxes

The Contract price includes all taxes, fees or duties levied in connection with the delivery of the Equipment [performed on EXW (INCOTERMS 2000) basis], except for (i) VAT and other sales tax and (ii) any other taxes, fees and duties levied after the EXW delivery of the Unit(s) in accordance with Clause 9.1.

If any taxes, customs duties, fees and duties are levied after the EXW delivery of the Unit(s) in accordance with Clause 9.1 in connection with the performance of the Contract at the expense of the Supplier or of its delegated personnel, such taxes, customs duties, fees and duties shall be paid and borne by the Purchaser, or, if paid by the Supplier or of its delegated personnel, the amount thereof shall be refunded by the Purchaser to the Supplier within one (1) month starting from the presentation by the Supplier of certified copy of the tax forms or documents.

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 C, set forth in the Purchase Order.

Should the issuance of the PAC be delayed by more than three (3) months after the scheduled date of issuance of the PAC due to reasons not attributable to Supplier, payment of the instalment (if any) due at PAC shall be made within sixty (60) days after the expiry of that three (3) months period.

Ali payments shall be made to Supplier within sixty (60) days after receipt of the Supplier's invoice accompanied by the other agreed payment documents.

Notwithstanding anything to the contrary contained or implied in the Contract, the Purchaser shall be under no obligation to make any payment to the Supplier in case title claims are raised by any third party.

The Purchaser shall not be entitled to set-off any amounts of money owing to Supplier pursuant to the Contract against counter claim(s) which the Purchaser may have against the Supplier, whether by reason of Defects, delay or otherwise, unless such claims arise out of the Contract or of such a contract where the Supplier's organizational unit (e.g. Business Unit) as a party to such other contract is identical to the Supplier's organizational unit (e.g. Business Unit) being the Party 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. The costs of issuing and maintaining the guarantee shall be borne by the Supplier. If the Purchaser is in default in making any payment to Supplier under another contract with Purchaser currently in execution, the Supplier may, notwithstanding anything to the contrary contained or implied in the Contract, postpone the submission of the guarantee until the default has been remedied by the Purchaser.

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 per Incoterms 2000). Partial deliveries and deliveries in advance of the time schedule may not be made without Purchaser's explicit prior consent.

The delivery date(s), the date of completion of the Work or, in the case of a service being performed at regular intervals, the period of the Contract, shall be those dates specified in the Purchase Order or in the time schedule referenced in the Purchase Order. The Supplier shall furnish such programmes of manufacture and delivery and performance of any services as the Purchaser may reasonably require.

9.2 Transport Documents

The Supplier shall, subject to and in accordance with the Purchaser's Shipping, packing and marking standards and instructions incorporated into the Contract by reference in the Purchase Order, in a timely manner provide detailed and accurate packing lists and such other transport documentation to the Purchaser as the Purchaser may reasonably require. When requested by the Purchaser, Supplier shall provide the packing list with values for each item. For customs clearance Supplier shall



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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 Purchaser any costs, fines, penalties or charges incurred by Purchaser due to Supplier's inaccurate documentation, whether these were known to the Supplier or not.

9.3 Transportation

The Purchaser shall be responsible to transport the Unit(s). If the specified accompanying documents, if any, which may be furnished by the Supplier hereunder, are not received by the Purchaser for a consignment in time, the Unit(s) will be stored at the Supplier's expense and risk until such documents are received.

9.4 Packing and Marking

Packing and marking will be in accordance with the Purchaser's Shipping, packing and marking standards and instructions incorporated into the Contract by reference in the Purchase Order or, if not specified, in accordance with best industry practice and consistent with applicable law.

9.5 Importation

If the Unit(s) will be delivered to a destination country that has a trade agreement or a special import/customs program applicable to the Work and such program is in the Purchaser's judgement of benefit to Purchaser, Supplier shall cooperate with Purchaser to ensure that the goods are eligible for such special program for Purchaser's benefit and/or Supplier shall provide Purchaser with any required documentation to realize any credits available under that trade agreement for Purchaser's benefit. Failure to do so will render the Supplier liable for any additional cost incurred by the Purchaser.

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) and provide the Certificate of Origin before dispatching any part 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 shall pass to the Purchaser on delivery as set out in Clause 9.1.

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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 Purchaser upon delivery in accordance with Clause 9.1, unless otherwise stated in the Contract.

9.9 Core and Custody

Goods belonging to or provided by the Purchaser, which are in the Supplier's custody for any purposes, shall be clearly marked and recorded by the Supplier as belonging to the Purchaser and shall be in such custody at the Supplier's risk.

9.10 Acceptance

Prior to shipment Supplier shall perform the FAT to demonstrate readiness and functionality of each Unit and its compliance with the Technical Specification. Upon successful completion of the FAT the Unit shall be deemed ready for delivery EXW, agreed place of manufacture (as per Incoterms 2000).

Subject to and in accordance with the Contract, the Supplier undertakes to perform the SAT which shows completeness and functionality of each Unit in its power plant environment.

Supplier shall invite Purchaser to the FAT and/or, as applicable, the SAT (collectively the "Acceptance Tests") three (3) weeks in advance (or such other period as is requested by the Purchaser to satisfy the Client's requirements). The Supplier shall carry out the FAT and/or, as applicable, the SAT in the presence of the Purchaser (and, if required, the Client or the Client's authorized representative) in accordance with the test specifications set out in the Contract and shall prepare a report of the results of the FAT and/or, as applicable, the SAT, which will be signed by both Parties. The report will record the test results and the time when the FAT and/or, as applicable, the SAT respectively was completed.

If Purchaser declines to take part in the FAT and/or, as applicable, the SAT or fails to attend the test after due notification, the Supplier shall be entitled to carry out the FAT and/or, as applicable, the SAT with binding effect on both Parties.

If the FAT or, as applicable, the SAT fails due to reasons for which Supplier is responsible, Supplier shall be entitled to perform remedial work within a reasonable period of time, having due regard to the Purchaser's requirements under the Client Contract, whereupon the FAT or SAT (as applicable) shall be repeated. If the third test fails due to reasons for which Supplier is responsible, Purchaser may reject and return the Unit or, as applicable, the defective part thereof to Supplier by notice in writing. Upon rejection of the Unit (or parts thereof) the Purchaser shall, at its sole discretion, either request Supplier to replace the defective parts of the Unit and perform a further test within such time as is reasonably determined by Purchaser or, except in case of Defects which do not prevent the safe and reliable operation and use of the Unit ("minor or

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insignificant Defects"), terminate the Contract pursuant to Clause 17.2 for Supplier's material breach by notice in writing.

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 material and labour costs, including costs of travelling, lodging and living, incurred by the Supplier in repeating the SAT. Other incidental costs, if incurred by the Purchaser in repeating the SAT, are recoverable from the Supplier provided, however, that a reasonable mutual agreement in writing, depending on the site specific situation, on the extent of such recovery is reached.

In case the SAT has to be repeated for reasons attributable to both, the Supplier and the Purchaser, each Party shall bear the costs incurred by it in repeating the SAT.

Upon successful completion of the Acceptance Tests the Work shall be deemed accepted by Purchaser, and the Purchaser shall issue the provisional acceptance certificate ("PAC") within ten (10) working days after Client's acceptance of the Work.

If any of the aforesaid Acceptance Tests shows that the Unit(s) is(are) substantially in conformance with the requirements of the Contract and Applicable Legislation, but reveals minor or insignificant Defects, the Purchaser shall accept the Work. Such minor or insignificant Defects will be remedied by the Supplier within a reasonable period of time. In the event the Supplier fails to do so, the Purchaser shall remedy such minor or insignificant Defects or engage a qualified third party to remedy such minor or insignificant Defects, in each case at Supplier's expense.

10. Delayed Delivery

The Supplier shall notify the Purchaser immediately in writing if the delivery of a Unit or the performance of the Work is delayed or likely to be delayed beyond its specified date or beyond such date as is reasonably required to ensure timely completion of the Work. The notification shall include Supplier's proposal for acceleration of the progress so as to achieve the delivery date(s) of the Unit(s) or, as applicable, the date of completion of the Work on time. Purchaser may require that the accelerated delivery includes airfreight.

Unless the delay is the fault of the Purchaser, the cost of the acceleration measures including transportation by airplane shall be borne by the Supplier.

If Supplier fails to deliver any Unit as scheduled due to reasons attributable to Supplier, Purchaser may for the delay period apply the liquidated damages at the rates and up to the maximum amount as set forth in Appendix B hereof.

If the delivery of all or any portion of documents as listed in Appendix B is delayed beyond the respective delivery date due to reasons attributable to Supplier, Purchaser may for the delay period apply the liquidated



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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 Purchaser is likely to suffer as a result of the delay and are liquidated damages and not a penalty.

Notwithstanding anything to the contrary contained or implied in the Contract, the liquidated damages set forth in this Clause 10 shall be the sole and exclusive remedy of Purchaser for delay in the performance of the Contract, save for Purchaser's right to terminate the Contract in accordance with Clause 17.2.

11. Liabilities and indemnities

11.1 Indemnification

Supplier shall indemnify and save harmless the Purchaser, its officers, employees, servants or agents at all times during the term of the Contract against and from all suits, proceedings, claims, demands, loss, liability, cost and expense (including reasonable attorney's fees) relating to bodily injury (including death) or to loss of or damage to property of third parties to the extent that the same arise out of any act or omission of the Supplier, its officers, employees, servants or agents or subcontractors. The Purchaser will notify the Supplier in writing of a third party claim and if legally permitted the Purchaser shall give the Supplier the opportunity to defend and settle the claim at Supplier's cost and expense.

11.2 Economic Loss

Notwithstanding anything to the contrary contained or implied in the Contract, but except (i) for the payment of liquidated damages specified in the Contract and (ii) subject to the second Paragraph of this Clause 11.2, for Supplier's indemnification obligations pursuant to Clauses 3.3, 5.1, 11.1, 11.3 and Clause 15.2 hereof, in respect of Purchaser's liability to third parties (including reasonable cost and expenses incurred by Purchaser in respect of these claims), neither Party shall have any liability whatsoever to the other, whether by way of indemnity, breach of statutory duty, in contract, in tort (including negligence) or under any other legal theory, for the other Party's loss of profit or revenue, loss of power or operation, loss of contract or business or for any financial or economic loss or for any special, incidental, indirect or consequential damage whatsoever.

The Supplier shall have no obligation to indemnify the Purchaser against any claims by the Client relating to loss of profit or revenue, loss of power or operation, loss of contract or business or for any financial or economic loss suffered by the Client, which are part of the Purchaser's liability to third parties as stated in the preceding paragraph of this Clause 11.2.

11.3 Product Liability

The Supplier agrees to indemnify the Purchaser and the Client, subject to and in accordance with the applicable law on product liability, against all damages or losses which result from product liability claims in connection with the Supplier's performance of the Contract.

11.4 Limitations of Liability

Notwithstanding anything to the contrary contained or implied in the Contract, the Supplier's aggregate liability for all claims of any kind, whether by way of indemnity, breach of statutory duty, in contract, in tort (including negligence) or under any other legal theory, other than claims (i) under Clauses 11.1 and 11.3 and (ii), subject to the second Paragraph of this Clause 11.4, under Clauses 3.3, 5.1 and 15.2 hereof, for all loss or damage arising out of the Contract or the performance or breach thereof (including liquidated damages) shall not exceed the amount of the Contract price.

The Supplier's aggregate liability for all claims of any kind, whether by way of indemnity, breach of statutory duty, in contract, in tort (including negligence) or under any other legal theory, arising out of or connected with Clauses 3.3, 5.1 and/or Clause 15.2 hereof shall be limited to the amount equal to five (5) times the Contract price (but not less than Euro 350'000, except, however, that such limit would exceed the amount of Euro 6'000'000 in which case the Supplier's aggregate liability for all such claims shall in no event exceed the amount of Euro 6'000'000.

11.5 Precedence

This Clause 11 shall govern and take precedence over any other provision elsewhere in the Contract. Subject to Clause 22.3 and save for any matter under dispute, all of Supplier's obligations and liabilities shall expire at the end of the warranty period as set out in Clause 6 hereof.

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 policy the Supplier shall be expressly named as an additional insured with respect to loading and lashing activities. The insurance shall be maintained during the term of this Agreement. Upon request the Purchaser shall submit to the Supplier an insurance certificate confirming the insurance coverage as described herein.

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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 to the extent that such damage is caused by inadequate packing, loading and lashing by the Supplier of the Unit(s) if resulting from the Supplier's failure to follow the Shipping, packing and marking standards and instructions incorporated into the Contract by reference in the Purchase Order.

The Purchaser shall claim all damages due to inadequate loading and lashing by the Supplier with its transport insurer and shall remit the amount of the payment received from the transport insurer to the Supplier upon receipt thereof. The deductibles shall be borne by the Supplier, provided, however, that the amount thereof shall not exceed ten thousand Euros (10'000 Euros) per occurrence.

12.2 Insurance Claims

The Purchaser shall be responsible for the transportation of the Unit(s) (Clause 9.3). It shall advise the Supplier and the insurers in a timely manner of any loss or damage in transit. Upon Purchaser's request the Supplier shall provide the Purchaser with all documentation, if reasonably available, which the Purchaser may require for the preparation and processing of an insurance claim.

12.3 Supplier insurance

Supplier shall maintain (a) Comprehensive General Liability insurance in the amount of Euro 3,000,000 (three million Euro) combined single limit per occurrence and Euro 6,000,000 (six million Euro) in the aggregate, including coverage for damage to Purchaser's property in the Supplier's care, custody or control, (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 leased by Supplier in connection with the Contract. Upon request, Supplier shall furnish to Purchaser a Certificate of Insurance completed by its insurance carrier(s) certifying that insurance coverages are in effect. Supplier shall inform Purchaser of any material changes of any of the above stated insurance.

13. Force Majeure

If performance of the Contract is delayed by any act of God, act or omission of government, strike (other than a strike which is specific to Supplier's or its subcontractors' employees), war or any other event beyond either Party's reasonable control and which was (a) unforeseeable (b) unavoidable and (c) not caused in whole or in part by any act or omission of the delayed Party ("Force Majeure"), then the time for performance shall be extended accordingly subject to the delayed Party promptly (but not later than ten (10) days after the occurrence of the Force Majeure event) or after the date the event should reasonably have been known to the delayed party) informing the other Party of the event and providing evidence expeditiously that the Force Majeure event has impacted the timely completion of items of work on the critical path.

Upon the occurrence of an event of Force Majeure the Parties shall take all reasonable steps to reduce the delay and perform their obligations as far as reasonably practical. The affected Party shall inform the other Party of the steps it proposes to take to mitigate the effects of Force Majeure including reasonable alternative means for the performance of the Contract.

14. Assignment and Subcontracts

The Contract shall not be assigned or subcontracted by the Supplier as a whole. The Supplier shall not assign or subcontract any part of the Work without the Purchaser's prior written approval, which shall not be unreasonably withheld. The restriction contained in this Clause shall not apply to subcontracts for standard materials with a value of less than fifty thousand Euro (50'000 Euro) or equivalent, or for any part for which the subcontractor or sub-supplier is named in the Contract. The Supplier shall be responsible for all work performed and goods supplied by its subcontractors and sub-suppliers.

The Purchaser may assign the Contract to any ALSTOM Affiliate subject to prior written notice to 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 connection with the Contract shall remain at all times the Purchaser's property and may be used by the Supplier only for the purpose of performing the Contract. The Supplier shall keep such information and know-how confidential and shall return them and all copies of same to the Purchaser upon request. Without obtaining Purchaser's prior written approval the Supplier is not entitled to copy or reproduce in any way such documents and/or information or to disclose to third parties, other than those parties entrusted directly by the Supplier with carrying out portions of the Contract and subject always to Supplier obtaining from such parties a confidentiality undertaking similar in substance to that herein contained.

Unless specifically requested by Purchaser in the Contract any inventions, patents, copyrights, design rights and other intellectual property rights resulting from the performance of the Contract shall become the property of the Supplier; however the Supplier will grant to Purchaser and the Client a non-exclusive, perpetual, royalty free license to use such rights for the limited purpose to complete, operate and maintain the Work but not otherwise.

However and independently of the existence of the abovementioned intellectual property rights, the Purchaser shall practice, sell or use the

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Work and any modification thereof exclusively for the particular plant forming the basis for the Technical Specification of the Contract.

15.2 Patent Infringement

Supplier represents and warrants that the Unit(s) performed pursuant to this Contract and the sale or use thereof do not infringe any patent, trade secret, copyright or trademark, and that Supplier will, at its expense, defend, indemnify and hold harmless Purchaser and Client from and against all claims, demands, actions and liability based on alleged or actual infringement thereof. The Supplier, at its option, shall deliver non-infringing goods or services, or modify the goods and services so as to become non-infringing, or procure at the Supplier's cost the right to continue using Supplier's infringing goods and services.

15.3 Advertising

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

16. Suspension

The Supplier shall have no right to suspend the performance of the Work, unless the Purchaser, for any reason (other than breach by Supplier of its obligations under the Contract), fails to make any payment when due which failure continues for more than sixty (60) days after such payment is due.

The Purchaser may at any time instruct the Supplier to suspend the performance of the Work or portion thereof by giving written notice to the Supplier.

The Supplier shall discontinue performance under the Contract to the extent specified in the notice of suspension, place no further orders or subcontracts for goods, materials, services, or facilities with respect to the suspended part of the Work (other than as required in the notice) and take all other reasonable steps to minimise costs associated with such suspension.

Save where the Purchaser has suspended for Supplier's breach and/or by reason of Force Majeure, the Purchaser shall reimburse to the Supplier the direct costs (excluding any profit element) attributable to the suspension which are incurred during the suspension period, provided that (a) the same are reasonable and properly evidenced in writing and (b) the Supplier has complied in all material respects with its obligations under this Clause 16.

In the event of a suspension by the Purchaser, a change order shall be issued in accordance with Clause 3.2, unless Purchaser has suspended for Supplier's breach and/or by reason of Force Majeure.

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 termination (other than due to Supplier's insolvency or default or to Force Majeure), Purchaser and Supplier shall negotiate reasonable termination costs in respect of work performed prior to such termination becoming effective or incurred as a direct result of such termination, on the basis of Supplier's proposal, within sixty (60) days of Purchaser's termination notice, unless the Parties have agreed in advance to a termination schedule in writing, in which case such termination schedule shall apply, to the exclusion of any and all further claims by Supplier.

Supplier shall take all reasonable steps to minimize its cost and losses and the Purchaser's liability under this clause shall in no event exceed the Contract price.

17.2 Termination for Breach

The Purchaser may terminate the whole or part of the Contract by written notice without prejudice to any other of its rights or remedies and without liability to the Supplier if :

- 17.2.1 the Supplier is in material breach of its obligations (including non-compliance with Applicable Legislation) and, where capable of remedy, does not remedy the breach as soon as reasonably possible after having received the Purchaser's written notice, having regard to the circumstances, or
- 17.2.2 the Supplier fails to deliver the Unit(s) due to reasons attributable to Supplier by the date that the maximum of the liquidated damages specified in Appendix B, Clause 3 hereto have been exceeded; or
- 17.2.3 if Supplier fails to make sufficient progress and such failure, in Purchaser's reasonable judgement, endangers the timely completion of the Work or the due performance of this Contract in accordance with its terms and the Supplier has not submitted an action plan within ten (10) working days which satisfies the Purchaser that the Supplier is able to achieve the completion of the Work on or before the date that the maximum of the liquidated damages specified in Appendix B, Clause 3 hereto have been exceeded, or
- 17.2.4 the Supplier becomes bankrupt or insolvent or makes an arrangement with its creditors or has a receiver or administrator appointed or commences to be wound up.

In the event the Contract is terminated under this clause, (i) Supplier will be liable to Purchaser for all liabilities, costs and expenses Purchaser incurs in completing the Contract and in fulfilling Supplier's obligations and such compensation shall include the right to recover reasonable attorneys' fees and costs of collection (the "Completion Cost") and (ii) Purchaser shall

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 ascertained. If the Completion Cost when added to the amount paid to Supplier for the Certified Work prior to the date of termination exceed the Contract price, the excess shall be paid to Purchaser within thirty (30) days after receipt of Purchaser's invoice; otherwise Purchaser shall pay Supplier the difference within thirty (30) days after receipt of Supplier's invoice.

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 specified in the Contract or such use is materially impaired, the Purchaser may reject the Work in total and require the removal of the Unit(s) and reimbursement of the Contract price.

17.4 Supplier's Continuing Obligations

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 drawings and documents prepared for the purpose of performing the Contract,
- (ii) assign to Purchaser all subcontracts and vendor contracts relating to the performance of the Contract to the extent possible.
- (iii) do and procure all things necessary to vest and secure good title in the goods comprising the Work in the Purchaser.

17.5 Prolonged Force Majeure

If an event of Force Majeure exceeds a continuous period of six (6) months either Party shall be entitled, upon four (4) weeks notice, to terminate the Contract and the Supplier shall be entitled to receive payment for the Work performed up to the time of termination, including compensation for the cost which Supplier is legally liable to accept as a result of the Contract termination, provided that Supplier's subcontracts include a similar clause.

17.6 Termination by Supplier

The Supplier may terminate the whole or part of the Contract by written notice without prejudice to any other of its rights or remedies and without liability to the Purchaser if :

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- 17.6.1 the Purchaser fails to make any payment when due which failure continues for more than one hundred eighty (180) days after such payment is due; or
- 17.6.2 the Purchaser becomes bankrupt or insolvent or makes an arrangement with its creditors or has a receiver or administrator appointed or commences to be wound up.

In case of termination of the Contract due to Purchaser's default as set forth above the Supplier shall be compensated in accordance with the provisions set out in Clause 17.1, however, Purchaser's liability shall in no event exceed in the aggregate the Contract price portion of the terminated part of the Contract.

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' Convention on the International Sale of Goods" dated April 11, 1980, as well as the Swiss Private International Law Statute, are excluded.

Disputes which cannot be resolved in good faith negotiations within sixty (60) days following a written dispute notice from a Party shall be subject to the jurisdiction of the Swiss courts.

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 or alleged non-performance of the Contract by the Supplier, or in respect of goods or services supplied under it, the Supplier shall at its own expense on request by the Purchaser join the Purchaser in defending the claim.

18.3 Decisions

The decision of any court or arbitration tribunal deciding upon any claim in respect of the Work shall, so far as is relevant and admissible by law, be admitted as conclusive in any consequent claim made by the Purchaser against the Supplier under the Contract.

18.4 Mediation

The Parties shall make reasonable efforts to resolve a dispute through mediation and shall in good faith agree on the details of the mediation procedures; however such attempt to resolve a dispute by mediation shall not be mandatory and shall not prevent a Party to subject the resolution of disputes to the jurisdiction of the courts as set out in Clause 18.1 above.

19. Entire Agreement

The Contract constitutes the entire agreement and understanding between the Parties on the subject matter hereof and supersedes all prior negotiations, documents, memoranda or other written, oral or electronically transmitted or stored statements which are not expressly incorporated therein.

20. Waiver

A Party's exercise or failure to exercise or enforce any right or remedy provided by the Contract shall not be deemed as or construed to be a waiver of any right or remedy it may have for the other Party's then existing or subsequent default, breach or non-compliance.

21. Notices

All notices, demands or communications related to this Contract shall be in writing and sent by fax or mailed to the addresses given in the Contract.

22. Miscellaneous

22.1 Electronic Commerce

Upon Purchaser's request Supplier agrees to participate in all of Purchaser's current and future electronic commerce applications and initiatives. Without prejudice to Clause 19, for contract formation, administration, changes and all other purposes each electronic message sent between the Parties within such applications or initiatives will be deemed written and signed and an original business record when printed from electronic files or records established and maintained in the normal course of business. The Parties expressly waive any right to object to the validity, effectiveness or enforceability of any such electronic message on the ground that any law requires written and signed agreements between the Parties, any such electronic documents may be introduced as evidence in any proceedings as business records originated and maintained in paper form. By placing a name or other identifier on any such electronic message, the Party doing so intends to sign the message with its signature attributed to the message content. The effect of each such message will be determined by the electronic message content and by the law applicable to the Contract, excluding any law requiring signed agreements or which is otherwise in conflict with this clause.

22.2 Execution Copies

This Contract may be executed in one or more counterparts, each of which shall for all purposes be deemed an original and all of which shall constitute the same instrument.

22.3 Surviving Provisions

The following Clauses shall survive termination or expiration of the Contract and will remain binding upon and for the benefit of the Parties, their successors and permitted assigns: Clauses 11.2 through 11.5, 15, 18 and 22.5.

22.4 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 stated in the Contract, then such failing Party shall, without prejudice to Clause 17.6.2, pay interest on the overdue amount at a rate of four percent (4%) per annum over the applicable six months LIBOR without the requirement of a formal notice.

22.5 Confidentiality

Each Party may during the term of the Contract disclose certain confidential information to the other Party as deemed necessary for the performance of the Contract. Information which is clearly marked as being confidential ("Confidential Information") shall be treated by the receiving Party as confidential and shall not be disclosed to a third party or be used for any purpose other than the performance of the Contract without the prior written agreement of the disclosing Party. Confidential Information may be disclosed to the Client for the completion, operation and maintenance of the Work and to parties entrusted by Supplier with the performance of portions of the Work, provided respective confidentiality undertakings have been obtained from the Client or such third party. Confidential Information shall be disclosed to a Party's employees on a need-to-know basis only.

The provisions set forth in this clause will not apply to any information, which now or hereafter (i) is in the public domain without either Party's breach hereof; (ii) is received by either Party rightfully from any third party; (iii) is disclosed to either Party by a third party not under any obligation of confidentiality; (iv) is known to either Party before receipt of the same from the other Party; (v) is developed by a Party without use of information received from the other Party.

22.6 Spore Parts

The Supplier undertakes to supply spore parts for the Unit(s) , which correspond to the original parts (or where original parts are no longer available substitutes that are compatible in function and inter- changeable) for a period of fifteen (15) years. Beyond this period the Supplier undertakes to use its reasonable endeavours to supply spore parts. If within such period Supplier intends to discontinue the manufacture of certain spore parts or becomes aware that the manufacturer of certain spore parts is to discontinue manufacture, the Supplier shall inform Purchaser promptly and shall give the Purchaser the opportunity to make a final order.

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") for the supply of
..... at a total price of
..... . According to this Contract, Supplier is required to
provide you with a performance guarantee in the amount of
..... (10% of the Contract Price).

This being stated, we, (name and address of bank), irrespective of the validity and the legal effects
of the above-mentioned Contract and waiving all rights of objection and defence arising from the
principal debt, hereby irrevocably undertake to pay immediately to you, upon your first demand,
any amount up to
(currency / maximum amount) (in full letters:
.....)

upon receipt of your written request for payment and your written confirmation stating that in your
belief Supplier has not fulfilled its obligations in conformity with the terms of the above- mentioned
Contract.

For the purpose of identification, your request for payment and your confirmation have to be
presented through the intermediary of a first rate bank confirming that the signatures are legally
binding upon your firm. If, in this respect, such bank will make use of tested telex, SWIFT or
tested cable, it will have to transmit in any case the full wording of your request for payment and
of your above-mentioned written confirmation and to confirm at the same time that the originals of
these documents, legally binding upon your firm, have been forwarded to us.

Our guarantee is valid until and expires in full and automatically, should your written
request for payment not be in our possession at our above address on or before that date, regardless
of such date being a banking day or not.

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

(Place, date)

(Name of issuing bank)

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 damages shall apply at a rate of two percent (2%) of the total Unit price for each week of delay (and pro rata temporis for a part of a week) up to a maximum amount of fifteen percent (15%) of the price of the delayed Unit. If the Unit is supplied in partial deliveries, the liquidated damages as set out in the preceding sentence shall exclusively apply to and be calculated for the longest period of delay experienced for any of these partial deliveries. For the delay of the other partial deliveries no further liquidated damages shall apply.

2. Late Submission of Documents

If the submission of any of the documents listed below is delayed as against the scheduled delivery date due to any reasons attributable to the Supplier, liquidated damages shall apply at a rate not exceeding the following maximum amounts:

(i) If the Contract price is equal to or less than one million Euros (1'000'000 Euros), the liquidated damages shall amount to four hundred Euro (400 Euro) for each day of delay in submitting the document, it being agreed that the maximum amount of liquidated damages which may become payable hereunder shall in no event exceed altogether twelve thousand Euros (12'000 Euros).

(ii) If the Contract price is greater than one million Euros (1'000'000 Euros), the liquidated damages shall amount to one thousand Euros (1'000 Euros) for each day of delay in submitting the document, it being agreed that the maximum amount of liquidated damages which may become payable hereunder shall in no event exceed altogether thirty thousand Euros (30'000 Euros).

The total number of documents which respect to which liquidated damages may become applicable in case of late submission thereof as aforesaid, shall not exceed eight (8). Such total number consists of the five (5) documents listed below and three (3) documents to be mutually agreed upon in the Contract based on the specific requirements of the Project.

- (a) layout drawings / civil guide drawings
- (b) site support document for field assembly/erection supervision and for engineering/commissioning handover binder to be submitted on the date stated in the Master Technical Specification
- (c) each monthly progress report to be submitted on the 25th calendar day of the Month, except as otherwise specified in the Purchase Order
- (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 forth in this Appendix B shall be the sole and exclusive remedy of

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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 delivery date, if any, the Supplier shall in no event have any liability for such delay irrespective of the reasons for such delay.

3. Maximum Amount

The total amount of liquidated damages for delayed delivery of the Unit(s) and the late submission of documents is limited to fifteen percent (15 %) of the price of the Equipment.

General conditions

[a) Delivery of an incomplete Unit or submission of incomplete documents specified above shall be deemed late delivery or submission (except for insignificant incompleteness).

b) Delivery of a defective Unit or Services or submission of defective documents specified above shall (except for "minor or insignificant Defects" as defined in Clause 9.10) be deemed late delivery or submission until the date non-defective Unit or non-defective documents have been received by Purchaser at the agreed point of delivery.

c) Unless otherwise agreed in the Contract the liquidated damages, if due, are payable to Purchaser within sixty (60) days of Purchaser's invoice.

Appendix C

Terms of Payment

