

**1. GENERAL**

- 1.1. Whenever ABB Limited (“ABB”) has referred to Orgalime SE 94 in a quotation or other type of offer or in an order acknowledgement, Orgalime SE 94 and this Addendum shall apply to the resulting Contract between ABB and the Purchaser. If the Purchaser refers to other terms and conditions in the Purchaser’s previous or subsequent communications with ABB, such other terms and conditions shall apply only to the extent ABB expressly agrees thereto in Writing.
- 1.2. The Purchaser represents that it has access to the Orgalime SE 94 terms and conditions.
- 1.3. Should ABB accept other terms and conditions than the ones contained in Orgalime SE 94 and this Addendum, ABB shall not be bound by the price, delivery terms, warranties and other terms quoted by ABB, unless the ABB quotation expressly refers to those other terms and conditions.
- 1.4. In the event of any contradictions or discrepancies between this Addendum and Orgalime SE 94, this Addendum shall prevail.

**2. DEFINITIONS**

In Orgalime SE 94 and this Addendum,

- (a) “Contractor” shall mean ABB; and
- (b) “Purchaser” shall mean the other party to the Contract; and
- (c) “Orgalime SE 94” shall mean Orgalime’s General Conditions for the Supply and Erection of Mechanical, Electrical and Associated Electronic Products, September 1994 edition or the latest edition published thereafter.

**3. AMENDMENTS****3.1. Standard Products**

- 3.1.1. The Plant shall be supplied in its standard version together with ABB’s relevant standard documentation and instruction manuals as appropriate. Alternative finishes, colours and special packing may be supplied at extra charge, as may additional documentation.
- 3.1.2. The Plant is not warranted to be fit for any particular purpose, unless and to the extent such particular purpose has been expressly specified and warranted by ABB in Writing.

**3.2. Health and Safety**

- 3.2.1. Unless the parties have agreed other safety regulations for the Site in the Contract or subsequently in Writing, the UK Construction (Design and Management) (“CDM”) Regulations of 1994 and subsequent re-enactments shall apply.

- 3.2.2. The price for providing specialist roles such as Planning Supervisor, Designer or Principal Contractor (as defined in the above-mentioned CDM regulations) is not included in the Contract Price, unless agreed separately in Writing.

**3.3. Payment Terms**

- 3.3.1. ABB shall be entitled to invoice the Purchaser as follows:

- (a) immediately after the formation of the Contract: 10% of the Contract Price;
- (b) when agreed drawings/information has been delivered: 20% of the Contract Price;
- (c) on notification to the Purchaser that the Plant, or an essential part thereof, is ready for dispatch from the place of manufacture: 60% of the Contract Price; and
- (d) on take-over or ninety (90) days from event ((c)), whichever first occurs: 10% of the Contract Price.

- 3.3.2. Payment shall be made by the Purchaser no later than thirty (30) days from the date the relevant invoice was issued. Should part of an invoice be disputed by the Purchaser, the Purchaser shall nevertheless pay the undisputed amount on the due payment date. Payment may be made via BACS.

- 3.3.3. Payment shall be made in the currency in which the Contract Price was quoted by ABB.

**3.3.4. Should**

- (a) the Purchaser’s payments be overdue by more than 14 calendar days;
- (b) proceedings be commenced to wind up the Purchaser (except for the purpose of solvent amalgamation or reconstruction);
- (c) any composition or arrangement with the Purchaser’s creditors be made; or
- (d) the Purchaser be put under administration, or if a receiver is appointed,

ABB shall be entitled (without incurring any liability therefor) terminate the Contract by notice in Writing, and thereupon to recover any loss or damage ABB has suffered as a result of such termination, except that the compensation paid towards such loss or damage shall not exceed the Contract Price.

**3.4. VAT**

The Contract Price is strictly net and exclusive of VAT and similar.

**3.5. Reservation of Title**

- 3.5.1. Until title in the Plant has passed to the Purchaser, the Purchaser shall keep the Plant and any part thereof in the Purchaser’s possession clearly

marked or otherwise identified as being ABB's, and store them separately from the Purchaser's own plant. ABB shall be entitled at any time during normal business hours to enter the Purchaser's premises in order to inspect the Plant and ensure that it is so marked or clearly identified.

3.5.2. Should the Contract be terminated by ABB for any reason before title in the Plant has passed to the Purchaser, ABB shall be entitled at any time during normal business hours to enter the Purchaser's premises in order to recover the Plant. ABB reserves the right to dispose of any Plant so recovered.

3.6. Export restrictions and non-authorised use

3.6.1. Any supply of technology under the Contract shall be subject to any laws and other restrictions on the export, re-export or import of any technology licensed under the Contract as may be imposed from time to time by the UK or United States Governments or their agencies. The Purchaser shall not knowingly export, re-export or import, directly or indirectly, any such technology licensed from or provided by ABB to any country for which the UK or United States Governments or any their agencies require an export licence or other Government approval at the time of such export, without first obtaining such licence or approval. The Purchaser shall require that all third parties receiving such technology from the Purchaser comply with this requirement.

ABB shall assist the Purchaser in every reasonable way in the investigation and clarification of any possible export or import licence requirements and in the obtaining of such licences at the Purchaser's cost.

3.6.2. The performance by either of the parties of an obligation under the Contract, which performance requires an export or import licence or other government approval, and any other obligation affected shall, to the extent it is necessary, automatically be suspended until such licence or approval as mentioned in sub-clause 3.6.1 is given. If such licence is not granted within a reasonable time or is revoked by the appropriate authorities, ABB shall be entitled to terminate the Contract, and the Purchaser shall compensate ABB for any loss or damage as a result of such termination.

3.6.3. Unless expressly agreed in Writing by ABB, the Works are provided on strict condition that:

- (a) they are solely for civil use;
- (b) they are not to be supplied to any country whether directly or indirectly or for any application where such supply or application is prohibited by any law or regulation binding or

effective in that country, in the United Kingdom or the country of manufacture; and

(c) they will not in any way be installed, used or applied in or in connexion with the operation of any nuclear facilities such as but not limited to nuclear power plants, nuclear fuel manufacturing plants, uranium enrichment plants, spent nuclear fuel stores or research reactors.

3.6.4. Whenever ABB so requests, the Purchaser shall provide ABB with an end-user certificate, which shall be subject to ABB's reasonable approval and signed by the Purchaser's authorised representative, confirming that the end-user shall comply with sub-clause 3.6.3, items ((a)) - ((c)). Until such time as ABB has received such end-user certificate, ABB shall be entitled to suspend the Works.

3.6.5. The end-user certificate referred to in sub-clause 3.6.4 shall form part of the Contract and any breach by the Purchaser or any for whom the Purchaser is liable (which shall, without limitation, include the end-user) of any of the provisions set out in sub-clause 3.6.3, items ((a)) - ((c)), shall be deemed a fundamental breach of contract by the Purchaser, and shall entitle ABB to terminate the Contract forthwith by giving notice to the Purchaser.

3.6.6. In the event of such termination as is mentioned in sub-clause 3.6.5, the Purchaser shall compensate (without limitation) ABB for any damage and losses sustained as a result of the breach.

3.6.7. The Purchaser shall keep ABB, its officers, directors, employees, agents and advisers indemnified against any claims and liabilities arising out of any breach by the Purchaser or any for whom the Purchaser is liable (which shall, without limitation, include the end-user) of any of the provisions set out in this sub-clause 3.6.

3.7. Limitation of liability

3.7.1. To the maximum extent permitted by applicable law, and notwithstanding anything to the contrary in the Contract or otherwise, neither party shall be liable to the other for any indirect, special, incidental or consequential damages such as, but not limited to, loss of revenue, loss of business, loss of use, interruption of business, loss of operation time, costs of capital and cost in connexion with interruption of operation.

3.7.2. To the maximum extent permitted by applicable law, ABB limits its aggregate liability under the Contract for direct damage to an amount equivalent to the price.

3.7.3. The Purchaser acknowledges that the contents of sub-clauses 3.7.1 and 3.7.2 have especially been brought to the Purchaser's attention, and that said sub-clauses have been duly negotiated between the parties.

**3.8. Indemnification**

If Plant is to be manufactured or any process is to be applied to Plant by ABB in accordance with a specification submitted by the Purchaser, the Purchaser shall indemnify ABB against all losses, damages, costs, expenses and claims suffered or incurred by ABB in connexion with infringement of any intellectual property rights of any third party resulting from ABB's use of the Purchaser's specification.

**3.9. Limitation period**

Subject to law as regards personal injury and death, the Purchaser shall have no claim against ABB, in contract or in tort, in relation to anything performed or delivered under the Contract (including claims for defective Plant, Works, services or goods), unless ABB has been notified In Writing of such claim within twenty-four (24) months of taking-over.

**3.10. Exclusion of third party rights**

Pursuant to section 1(2)(a) of the Contracts (Right of Third Parties) Act 1999 (the "Act"), the parties intend that no terms of the Contract may be enforced by a Third Party (as the term "Third Party" is defined in the Act).

**3.11. Governing law**

The Contract shall in all respects be governed by and construed in accordance with English substantive law. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract (even if the United Kingdom or any part thereof should accede to the said convention).

**3.12. Miscellaneous**

The Contract constitutes the complete and full understanding between the parties thereto with respect to the subject matter of the Contract and supersedes all previous negotiations, representations, agreements, commitments and writing in respect thereof. Neither party shall be bound by any terms conditions, definitions, warranties, understandings or representations with respect to such subject matter other than as expressly provided in the Contract or as duly set forth on or subsequent to the effective date thereof in Writing.