

ABB Limited, New Zealand

GENERAL TERMS AND CONDITIONS OF PURCHASE FOR GOODS AND SERVICES

Goods and Services are to be supplied to ABB Limited on the following General Terms and Conditions of business unless otherwise expressly agreed in writing between ABB Limited and the Vendor.

1. DEFINITIONS

- 1.1 "Commencement Date" means the commencement date of the particular contract of which these terms and conditions form part.
- 1.2 "day" or "days" means calendar days unless stated otherwise.
- 1.3 "Defective Goods" means Goods which are not in conformity with the Order or are defective in design, performance, workmanship or makeup.
- 1.4 "Defective Services" means Services or the results of any Services which are not in conformity with the Order, are of inferior quality or workmanship or are otherwise unsatisfactory.
- 1.5 "Delivery Date" means the date specified for delivery of the Goods as set out in the Order.
- 1.6 "Goods" means the goods, equipment, material and/or chattels supplied by the Vendor to the Purchaser specified in the Order (including any part of the Goods specified).
- 1.7 "Goods and Services Tax" or "GST" means the tax payable under the Goods and Services Tax Act 1985.
- 1.8 "Intellectual Property Rights" means all rights in and to all technology, techniques (both patented and non-patented), know-how, confidential information, patents, copyright, designs, trade names, inventions, discoveries and all other rights as defined by Article 2 of the Convention of July 1967 establishing the World Intellectual Property Organisation, including all applications for any of such rights as may exist anywhere in the world.
- 1.9 "Order" means the agreement between the parties consisting of the purchase order to which these Standard Terms and Conditions of Purchase apply and all documents referred to in the purchase order as applicable to the purchase order.
- 1.10 "Personnel" means, in relation to a Party, the employees, officers, agents, consultants and Sub- Contractors of that Party.
- 1.11 "Premises" means the site to where Goods are delivered or Services are provided.
- 1.12 "Price" means the price specified in the Order or the rates for supply of Goods and performance of the Services (as the case may be).
- 1.13 "Purchaser" means ABB Limited, a New Zealand company having its registered office at 83 Grafton Road, Auckland, New Zealand.
- 1.14 "Safety Performance Requirements" means those characteristics of the purchased item that need to be present to ensure safe functioning in the intended application. They include meeting any of our mandatory standards or external standard (such as Australian Standards and/or regulatory requirements). They also include those detailed specifications applicable to manufactured items that are necessary to guarantee the continued safe operation of the process in which they are used. For Services, they include ensuring that Services are provided by suitably qualified personnel to a suitably accredited service standard.
- 1.15 "Services" means the services specified in the Order (including any part of the specified services and the results of the specified services).
- 1.16 "Technical Materials" includes plans, designs, drawings, engineering information, data, specifications, reports, accounts and any other material specified in the Order.
- 1.17 "Vendor" means the party to whom this Purchase Order is issued who is the supplier of the Goods and/or Services.
- 1.18 "Warranty Period" means 24 months after the date the goods have been taken into use for its intended purpose, but not later than 36 months after the Delivery Date.

2. ACCEPTANCE OF PURCHASE ORDER

- 2.1 Upon receipt of the Order, the Vendor or its duly authorised agent shall sign and return the acceptance copy to the Purchaser within five (5) business days.
- 2.2 The Order when properly signed and bearing a purchase order number is the only form which will be recognised by the Purchaser as forming a binding contract between the Vendor and Purchaser.
- 2.3 The Order constitutes the entire contract between the Vendor and the Purchaser, and no representations or statements by any employee or agent not expressly covered by this Order shall be binding upon the Purchaser.
- 2.4 No terms stated by the Vendor in accepting or acknowledging the Order shall be binding upon the Purchaser unless accepted in writing by the Purchaser.

- 2.5 Any objection to these conditions must be raised and settled before the Order is accepted or acknowledged or the Vendor commences supply.
- 2.6 Any supply pursuant to the Order will be deemed to be an acceptance of these terms and conditions notwithstanding the Purchaser has not received the signed acceptance copy at the time of supply.
- 2.4 The Vendor may not assign the whole or any part of the Order without the Purchaser's prior written consent.
- 2.5 No waiver of a breach of any provision of the Order shall constitute a waiver of any other breach of such provision or of any other provision.

3. SUPPLY OF GOODS & SERVICES

- 3.1 The Vendor must supply the Goods and/or provide the Services to the Purchaser in accordance with, and as specified in, the Order.

4. CONDITIONS AS TO QUALITY AND DESCRIPTION OF THE GOODS

- 4.1 The Goods must match the description (including performance criteria) in the Order. If the Vendor gave the Purchaser a sample of the Goods before the Vendor fulfilled the Order, the Goods must correspond with the sample in addition to matching the description. Where the sample of the Goods does not match the description, the description of the Goods will apply.
- 4.2 The Goods must comply with any relevant standard of the Standards Association of New Zealand and any other standards specified in the Order.
- 4.3 The Goods must be fit for the purpose for which Goods of the same kind are commonly supplied and for any other purpose which the Purchaser has made known to the Vendor.
- 4.4 The Goods must be new and of merchantable quality unless otherwise stated in the Order.
- 4.5 The Goods must be clearly marked with the identification marks specified in the Order. These identification marks must also be shown on drawings and on dispatch lists.
- 4.6 Any computer software or hardware supplied in connection with the Goods must operate properly and in accordance with any specifications that may be set out in the Order.
- 4.7 The Goods must meet the Safety Performance Requirements of the intended purpose.

5. CONDITIONS AS TO QUALITY OF SERVICES

- 5.1 The Services must match the description of the Services in the Order.
- 5.2 If the Vendor provided us with a demonstration of the Services before the Vendor fulfilled the Order, the Services must correspond in nature and quality with the Services demonstrated.
- 5.3 If the Vendor showed the Purchaser a result to be achieved by the Services before the Vendor fulfilled the Order, the Services must correspond in quality with that result.
- 5.4 The Services must be performed by appropriately qualified and trained personnel.
- 5.5 The Services must be performed with due care and skill.
- 5.6 The Services must be fit for the purposes for which those types of services are commonly bought and for any other purposes which the Purchaser notifies to the Vendor.
- 5.7 Any items which the Vendor uses or supplies in conjunction with the Services must be of merchantable quality, comply with any applicable standards of the Standards Association of New Zealand and any other standards specified in the Order and be fit for their usual purpose and any purpose which the Purchaser notifies to the Vendor.
- 5.8 Where the Order nominates an accreditation body relevant to the provision of a service of the same nature as the Services then the Services must be provided to the standard required by that accreditation body and the Vendor must be accredited by the accreditation body at the time that the Services are provided. Where an accreditation body is not nominated in the Order, the Vendor must comply with industry standards for accreditation relevant to the provision of a service of the same nature as the Services.

6. PERFORMANCE ON OUR PREMISES

- 6.1 Where it is necessary for the Vendor to enter the Purchaser's premises, the Vendor will need to complete the necessary occupational health and safety and security on site inductions before commencing work.
- 6.2 The Vendor must, in delivering the Goods to the Purchaser's premises and performing the Services:
 - (a) use its best efforts not to interfere with any of the Purchaser's activities, or the activities of any other person, on the Purchaser's premises;
 - (b) be aware of, comply with, and ensure that the Vendor's personnel comply with:
 - (i) all applicable laws regulations and industrial awards and agreements, including all applicable safety, health and environment laws and regulations; and

- (ii) all safety, health and environment guidelines, rules and procedures applicable to the Purchaser's premises or specified in the Order; and
 - (iii) all directions and orders given by the Purchaser's representatives; and
- (c) ensure that the Purchaser's premises are left secure, clean, orderly and fit for immediate use.

7. PRICE

- 7.1 Unless otherwise stated, all prices specified in the Order are in New Zealand currency, fixed and not subject to escalation.
- 7.2 The Purchaser will not accept any additional costs unless previously agreed to in writing. The Purchaser has the right to refuse its consent.
- 7.3 The Purchaser shall pay the Vendor the Price specified in the Order.
- 7.4 Unless the Order provides otherwise, the Price is inclusive of:
- (a) all charges for packaging, packing, insurance and delivery of the Goods in accordance with the Order;
 - (b) the cost of the Services and any items used or supplied in conjunction with the Services; and
 - (c) all Taxes except GST.

8. TERMS OF PAYMENT

- 8.1 Unless the Order states that progress payments are to be made, the Vendor must invoice the Purchaser upon delivery of the Goods and/or upon completion of the Services.
- 8.2 Where progress payments are to be made, the Vendor must invoice the Purchaser at the end of each calendar month (or other period specified in the Order) for Goods delivered and/or Services performed by the Vendor in that month or that period (as the case may be).
- 8.3 When submitting an invoice under clause 8.1 the Vendor must provide the Purchaser with all relevant records to enable the Purchaser to calculate and/or verify the amount of the invoice together with the number of the Order.
- 8.4 The Purchaser will pay all invoices rendered to it under clause 8.1 or clause 8.2, by the 20th day of the month following receipt of the invoice, except where the Purchaser:
- (a) exercises its right to retain part of the price pursuant to clauses 8.5, 11.8 or 17.8; or
 - (b) dispute the invoice, in which case:
 - (i) the Purchaser will pay the undisputed part of the relevant invoice (if any) and dispute the balance; and
 - (ii) if the resolution of the dispute determines that the Purchaser is to pay an amount to the Vendor, the Purchaser will pay that amount as soon as practicable after resolution of that dispute.
- 8.5 The Purchaser may reduce any payment due to the Vendor under the Order by any amount for which the Vendor are liable to the Purchaser, including costs, charges, damages and expenses. This does not limit The Purchaser's right to recover those amounts in other ways.

9. DELIVERY

- 9.1 The Goods shall be delivered, properly packed and marked, and at the agreed place and Delivery Date. Unless otherwise expressly stated in the Order, delivery shall take place in accordance with the provisions of INCOTERMS 2000. It is a condition of the Order that delivery time(s) is (are) of the essence.
- 9.2 If for any reason whatsoever the Vendor is unable to fill the Order by the Delivery Date(s) the Vendor shall notify the Purchaser at once and apply in writing for acceptance by the Purchaser of the extension of time required.
- 9.3 Goods shipped must be as specified in the Order and no substitutions or changes are to be made without the Purchaser's written permission.
- 9.4 The Purchaser reserves the right to cancel the Order in whole or in part if deliveries are not made as stipulated herein. If any Order is so cancelled in whole or in part, the Vendor shall not be entitled to recover from the Purchaser any losses, costs, damages or expenses occasioned thereby.
- 9.5 The Purchaser's rights arising from any failure to deliver as stipulated herein are reserved notwithstanding any such cancellation of the Order and are not limited to the remedies expressly contained in the Order.
- 9.6 The Vendor must include a delivery docket in each package of Goods delivered to us. The delivery docket must detail the:
- (a) Order number
 - (b) item number;
 - (c) units of measure (as per the Order); and
 - (d) quantity delivered.

10. SHIPPING

For goods being shipped:

- 10.1 A full set of documents are to be rendered for each shipment and forwarded only to the Purchaser on the day of shipment. Bills of lading must be forwarded under separate registered mail. All invoices and shipping documents must show the Order number as set out herein.
- 10.2 Any loss of profits, bonding or wharf charges or consequential damages arising from not adhering to these and the following requirements shall be payable by the Vendor.
- 10.3 For domestic shipments or deliveries, invoices (original only), delivery dockets and/or shipping specifications (in triplicate) are required.
- 10.4 For foreign shipments, customs invoices, bill of lading and shipping specifications all in quadruplicate, the whole properly completed and certified in accordance with New Zealand customs regulations.

11. INSURANCE

- 11.1 The Vendor must effect or cause to be effected all risks property insurance for the Goods and for any specialised plant and equipment used in relation to the supply of Goods against the risk of loss, damage or destruction caused by insurable risks including theft, malicious damage, fire, lightning, storm and tempest for their full reinstatement or replacement value and including cover while the Goods and specialised plant and equipment are in transit or, in temporary storage during the course of transit.
- 11.2 The Vendor must effect or cause to be effected:
- (a) except in respect of the risks dealt with at clause 11.2(b) and clause 11.2(c), a broad form public and products liability policy written on an occurrence basis with a limit of indemnity of not less than \$10 million for each occurrence and, with respect to products liability only, also in the aggregate for all occurrences during the policy period, which covers the Vendor's liability (including to the Purchaser) in respect of:
 - (i) loss of, damage to, or loss of use of property; and
 - (ii) the injury (including disease or illness) to, death of or illness of any person, happening anywhere in New Zealand and arising out of or in the course of or in connection with the performance by the Vendor of the contract formed in relation to the Order. The definition of products under the policy is to be sufficiently wide to include all Goods to be supplied by the Vendor;
 - (b) comprehensive motor vehicle insurance with a limit of liability of not less than \$10 million for each occurrence which covers third party property damage arising from or in relation to any plant or vehicles (registered or unregistered) or any injury to or death of any person arising from or in relation to the use of any unregistered plant or vehicle in the course of performing the contract formed in relation to the Order; and
 - (c) compulsory third party vehicle insurance for all registered vehicles used in the course of performing the contract formed in relation to the Order.
- 11.3 The Vendor must effect or cause to be effected insurance which fully insures any injury, damage, expense, loss or liability suffered or incurred by any person engaged by the Vendor in the performance of the contract formed in relation to the Order (or their dependants) giving rise to a claim under any statute relating to workers or accident compensation or for employers liability at common law and where possible at law extending to indemnify the Purchaser as principal for principal's liability to persons engaged in performing the contract formed in relation to the Order by the Vendor.
- 11.4 The Vendor must effect or cause any other insurances reasonably required by the Purchaser from time to time.
- 11.5 The Vendor must ensure that each insurance referred to in this clause is in effect from the date of the Order and are maintained:
- (a) in the case of the insurance referred to at clause 11.1, until the Goods are delivered and installed (if required) in the case of the Goods and until the expiration or termination of the Contract formed in relation to the Order, in the case of the specialised plant and equipment;
 - (b) in the case of the insurances referred to at clause 11.2 and clause 11.3 until the expiry or earlier termination of the contract formed in relation to the Order; and
 - (c) in the case of any insurance required by us under clause 11.4, until the date notified by the Purchaser.
- 11.6 The Vendor must, if requested by the Purchaser, in respect of each of the insurances referred to in this clause 11 provide the Purchaser with a copy of the policy wording and a certificate of currency at the date of the Order.
- 11.7 If the Vendor does not comply with clause 11.6 the Purchaser may, but is not obliged to, effect the relevant insurances and may recover the cost of doing so as a debt from the Vendor or deduct the premiums payable from any amounts payable to the Vendor under the Order.
- 11.8 The Vendor must notify the Purchaser immediately where it receives a notice of cancellation or any other notice in respect of the insurances required to be maintained under this clause 11 from any insurer, including providing a copy of that notice without undue delay.
- 11.9 The Vendor must ensure that the insurance referred to in clause 11.2 extends to insure the Purchaser for its vicarious liability for acts or omissions by the Vendor and the Vendor's personnel and the policy must provide that the insurer waives all rights of subrogation which it may otherwise be entitled against the Purchaser to the extent that the Purchaser is insured under the policy.

- 11.10 In respect of any insurance effected which insures multiple insureds the Vendor must ensure that the policy includes a cross-liability clause, a clause in which the insurer agrees not to impute the acts or omissions of one insured to another insured and, a clause in which the insurer agrees that any non-disclosures or misrepresentations prior to the effecting of the policy by any person will not be imputed to any other insured.
- 11.11 Subject to the Vendor's obligations to its insurers, the Vendor must inform the Purchaser immediately if it becomes aware of any actual, threatened or likely claims under any of the insurances referred to in this clause 11 which could materially reduce the available limit.
- 11.12 The Vendor must ensure that all sub-contractors are similarly insured as required by this clause 11.
- 11.13 The provisions of this clause 11 are not to be read so as to reduce the Vendor's liability under any other provision of the Order or these Standard Terms and Conditions.

12. CONFIDENTIALITY

- 12.1 Any knowledge or information concerning the design, manufacture, sale or use of the items covered by this order which the Vendor may disclose to the Purchaser incident to the performance, manufacture or delivery of items covered by this order shall be deemed to have been disclosed as a deliverable under the order and to be free from all restrictions as to the use or disposition thereof by the Purchaser, and the Vendor agrees not to assert any claim against the Purchaser by reason of the Purchaser's use or disposition thereof.
- 12.2 The Vendor shall keep confidential all information, drawings, specifications, data or any other details furnished by the Purchaser or prepared by the Vendor specifically in connection with the Order.

13. DRAWINGS

- 13.1 All drawings issued by the Purchaser in connection with the Order and any other Intellectual Property Rights in the matters the subject of the drawings shall always remain the property of the Purchaser and shall be returned to the Purchaser upon completion of the Order.
- 13.2 It is the Vendor's responsibility to ensure that all drawings used have been certified for construction and that all goods are manufactured according to such drawings or any subsequent revision thereof.
- 13.3 The Vendor shall only use the drawings in connection with the Order and shall return them forthwith upon the Purchaser's request.

14. ACCEPTANCE OF THE GOODS AND SERVICES

- 14.1 The Purchaser will not be deemed to have accepted any Goods or Services until it has had a reasonable time to inspect the Goods after delivery and to inspect and test the results of any Services after performance.
- 14.2 Payment for the Goods and any Services or the signing of delivery receipts before inspection does not constitute acceptance of the Goods or the Services.
- 14.3 The Vendor warrants that:
- the Goods supplied under the Order are free of defects in material, workmanship, design and fit for the particular purpose or use for which they are purchased; and
 - the Services and the results of the Services will be in conformity with the Order, of high quality and workmanship and otherwise satisfactory, for the Warranty Period.
- 14.4 If, during the Warranty Period, the Purchaser finds any of the Goods to be Defective Goods, the Purchaser may, at its option, and after notifying the Vendor in writing:
- reject the Defective Goods; or
 - make good the Defective Goods.
- 14.5 The Vendor must collect any Defective Goods that the Purchaser rejects as soon as possible after receiving written notification.
- 14.6 If, during the Warranty Period, the Purchaser finds any of the Services or their results to be Defective Services, the Purchaser may, at its option, and after notifying the Vendor in writing:
- reject the Defective Services; or
 - re-perform or make good the Defective Services.
- 14.7 At the Purchaser's option and request, the Vendor agrees to:
- repair or replace any Defective Goods free of charge;
 - re-perform or make good any Defective Services free of charge; and
 - reimburse the Purchaser for any expenses it incurs in making good any Defective Goods and any Defective Services, during the Warranty Period.
- 14.8 Any repairs or replacement Goods provided under this clause will be subject to the same warranty as the original Goods, from the date of repair or replacement.
- 14.9 Any Services that are re-performed or made good under this clause will be subject to the same warranty as the original Services, from the date of re-performance or on which the Services were made good.

- 14.10 The Vendor will not be liable for any defect in the Goods or any fault in any Service that is caused by the Purchaser's negligence or the negligence of the Purchaser's employees.
- 14.11 The remedies provided in this clause do not exclude any other remedies provided by law.
- 14.12 This warranty is in addition to any and all warranties offered by the Vendor and/or arising by operation of law and nothing contained herein shall be construed as limiting or restricting such warranties.

15. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS, STANDARDS AND LICENSES

- 15.1 The Vendor warrants to the Purchaser that the Goods the Purchaser produced or performed in compliance with all requirements of all applicable laws, regulations, standards and licensed, as amended, that relate to the performance of the Services or the supply of the Goods.
- 15.2 Without limitation the Vendor shall comply with all requirements relating to the payment or its suppliers or subcontractors, particularly those that may give rise to a claim by them against the Purchaser because of the Vendors non-compliance.
- 15.3 If the Order is subject to government contracting mandates as a condition to the effectiveness of this order, the Vendor agrees to certify to the Purchaser, by separate writing, that it complies with all government contracting requirements applicable to the Purchaser, the Vendor and the Goods.

16. INTELLECTUAL PROPERTY

- 16.1 The Vendor warrants and guarantees that goods supplied under the Order do not infringe any Intellectual Property Rights owned or controlled by any other institution, corporation, firm, body or person and agrees to indemnify and save harmless the Purchaser and its subsidiaries and affiliated companies against any and all liabilities, losses, damages, claims and expenses by reason of any claim, action or litigation arising out of any alleged or actual infringement of any Intellectual Property Rights foreign or domestic resulting from the use or sale by the Purchaser, its subsidiaries and affiliated companies of any goods supplied by the Vendor under the Order.
- 16.2 To the extent necessary for the use and enjoyment of Goods, the Vendor grants the Purchaser a perpetual, royalty-free license to use any Intellectual Property Rights in the Goods.
- 16.3 If the Purchaser requires the Vendor to supply software:
- the Vendor grants to the Purchaser a non-exclusive, royalty-free perpetual license to use any software provided by the Vendor hereunder. The Purchaser shall not be bound by the terms and conditions that may be contained in the Vendor's forms.
 - the Vendor grants to the Purchaser an unlimited, exclusive and perpetual license to use, modify and sublicense any custom software provided by the Vendor hereunder on behalf of the Purchaser and its customers.

17. INSPECTION

- 17.1 At all reasonable times:
- all Goods and/or Services included in the Order are subject to inspection, examination and attendance at tests performed on the Goods and/or Services by the Purchaser and/or his nominated representative at the Vendor's premises or any the premises of any sub-contractors; and
 - the Vendor agrees to provide the Purchaser with access to its premises to inspect, examine and attendance tests as provided in clause 17.1(a).
- 17.2 Such inspection shall not relieve the Vendor of his responsibility to comply with its obligations under these Terms and Conditions.
- 17.3 All Goods ordered will be subject to final inspection and approval, at the Purchaser's election, at Vendor's plant or other location designated by Purchaser or, if services, at the site of such services.
- 17.4 The Vendor must keep the Purchaser fully informed on all aspects of the delivery of the Goods and/or the performance of any Services, as required by the Purchaser from time to time.
- 17.5 The Vendor must provide to the Purchaser at the Purchaser's request:
- copies of all Technical Materials relating to the Goods and/or Services;
 - progress reports setting out, in such detail as the Purchaser may request, the different stages of design, manufacture and testing of the Goods and/or Services; and
 - a detailed program for the projected supply of the Goods and/or Services.
- 17.6 The Vendor shall give the Purchaser and its representatives 10 business days prior notice when any part of the Goods or the Services has been completed and is ready for review, inspection, examination or witnessing of testing.
- 17.7 If, as a result of the Purchaser's review, inspection, examination, or witnessing of testing, the Purchaser is not satisfied that the Goods and/or Services will comply in all respects with the Order, the Vendor shall take such steps as are necessary to ensure compliance with the Order.
- 17.8 The Purchaser has the right to withhold any payment of money due to the Vendor under the Order until such time as the Goods and/or Services comply with the Order.

18 TOOLING

18.1 Special tools, dies, patterns, jigs and fixtures used in the manufacture of goods covered by this Purchase Order shall become the property of the Purchaser and shall be delivered to the Purchaser on request. Such tooling shall not be used for producing equipment other than of the type and quantity specified in the Purchase Order.

19 PACKING AND HAZARDOUS MATERIALS

- 19.1 Damage to any goods, material or equipment resulting from improper packing shall be paid by the Vendor.
- 19.2 The Vendor shall notify the Purchaser of all "hazardous materials" (as that term is defined in applicable laws and regulations) which are contained in the goods.
- 19.3 The Vendor shall furnish the Purchaser with copies of all applicable "material safety data sheets" for Goods no later than the shipment date stated in the Order.

20 TITLE AND RISK

- 20.1 Unless otherwise stated in the Order, title to and risk in the Goods does not pass to us until the Purchaser takes delivery and accepts the Goods.
- 20.2 The Vendor warrants that:
- (a) the Vendor have complete ownership of the Goods free of any liens, charges and encumbrances and will provide the Goods to us on that basis; and
 - (b) the Purchaser will be entitled to clear, complete and quiet possession of the Goods.

21 INDEMNITY

- 21.1 The Vendor acknowledges that if the Vendor enters the Purchaser's Premises then, to the extent permitted by law, the Vendor does so at the Vendor's own risk. The Vendor must ensure that the Vendor's Personnel are also aware that they enter the Purchaser's Premises at their own risk.
- 21.2 The Vendor will be liable for, and will indemnify and keep the Purchaser indemnified from and against any liability and any loss or damage of any kind whatsoever arising directly or indirectly from:
- (a) any breach of any warranty or any of the other terms and conditions of the Order by the Vendor;
 - (b) any loss or damage arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by:
 - (i) the Goods and the performance of any Services by the Vendor; and/or
 - (ii) the entry onto, and the activities undertaken on and in, Our Premises by the Vendor or the Vendor's Personnel;
 - (c) any negligence or wilful act or omission by the Vendor and/or any of the Vendor's Personnel in connection with fulfilment of the Order;
 - (d) any claim made against the Purchaser by or on behalf of any of the Vendor's Personnel, or by any government or regulatory authorities, in respect of any relevant legislation concerning pay-roll tax, remuneration, income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal;
 - (e) any penalty imposed for breach of an applicable law in connection with the performance of the Services by the Vendor;
 - (f) loss or damage to any plant, equipment, tools, appliances or other property owned, rented or hired by the Vendor and used in relation to the Order; and
 - (g) any claim that the Goods, anything the Vendor does in supplying the Goods or providing the Services, or the Purchaser's use of the Goods or the results of the Services infringes or allegedly infringes the Intellectual Property Rights of any person; except to the extent that any liability, loss or damage is solely and directly caused by the Purchaser's wilful misconduct or Gross Negligence or that of the Purchaser's Personnel (other than the Vendor).
- 21.3 Each indemnity in the Order is a continuing obligation separate and independent from the Vendor's other obligations and survives termination of the Order.
- 21.4 It is not necessary for the Purchaser to incur expense or make payment before enforcing a right of indemnity conferred by the Order.

22 TERMINATION

- 22.1 The Purchaser may immediately terminate the contract formed in relation to the Order by notice in writing to the Vendor if:
- (a) the Vendor does not comply with or is in breach of any of the Vendor's obligations under the Order or these Standard Terms and Conditions and such non-compliance or breach is not remedied within 14 days after the Purchaser requests the Vendor to remedy it;

- (b) any representation, warranty or statement made by or repeated by the Vendor in or in connection with the Order is untrue or misleading (whether by omission or otherwise) in any material respect when so made or repeated;
- (c) an Insolvency Event occurs in respect of the Vendor; or
- (d) in the Purchaser's opinion, there is a Change of Control in relation to the Vendor.

The Vendor acknowledges that each and every of the events described above are deemed to be fundamental breaches of the contract formed in relation to the Order for the purposes of that contract and in the event of termination the Purchaser is entitled to full contractual damages.

- 22.2 The Purchaser may terminate the contract formed in relation to the Order at any time by notice in writing for reasons of professional misconduct, professional incompetence or misrepresentation of technical skills by the Vendor.
- 22.3 The Purchaser may terminate the contract formed in relation to the Order at any time upon 24 hours written notice to the Vendor.
- 22.4 The Purchaser may vary the Order or part of the Order at any time upon 7 days' written notice to the Vendor.
- 22.5 When the Vendor receives a notice of variation from the Purchaser, the Vendor must:
- (a) vary the Order in accordance with the notice; and
 - (b) send the Purchaser a Written Claim with an adjusted Price for the Order within 10 days of the effective date of variation.
- 22.6 When the Vendor receives a notice of termination from the Purchaser, the Vendor must:
- (a) stop work to the extent required by the notice;
 - (b) take such action as necessary or as the Purchaser directs, for the transfer, protection and preservation of the Purchaser's property;
 - (c) minimise the cost of termination; and
 - (d) where the notice is given under clause 22.3 only, send the Purchaser a Written Claim with an adjusted Price for the Order within 30 days of the effective date of termination.
- 22.7 The Vendor's Written Claim must:
- (a) set out all costs incurred to date in relation to the Order;
 - (b) set out all costs and cost savings that result from the variation or termination of the Order;
 - (c) where the Order has been terminated under clause 22.3, not specify an adjusted Price that is greater than the Price specified in the Order; and
 - (d) not specify an adjusted Price that includes any amount for anticipated profit, unperformed work or consequential loss or damage.
- 22.8 The Purchaser has the right to audit the adjusted Price specified in the Vendor's Written Claim.
- 22.9 The adjusted Price will apply to the Order, if:
- (a) the Purchaser is satisfied that the adjusted Price specified in the Vendor's Written Claim is equitable; and
 - (b) the termination or variation of the Order is not a result of any default or action on the Vendor's part, or on the part of the Vendor's Personnel (including, without limitation, any of the events specified in clauses 22.1 or 22.2).
- 22.10 Any expiration or termination of the Order does not affect:
- (a) any rights of the parties which may have accrued before the date of termination; and
 - (b) the rights and obligations of the parties under clauses 11, 16 and 21 which survive termination of the Order.

23 INDEPENDENT CONTRACTOR

- 23.1 Both parties acknowledge that the Vendor is the Purchaser's contractor and not its employee or agent.

24 SET OFF

- 24.1 The Purchaser shall be entitled at all times to set-off any amount owing from the Vendor to Purchaser or any of its affiliated companies against any amount payable in connection with this order by Purchaser.

25 NO LIABILITY FOR PURCHASER

- 25.1 Notwithstanding anything else contained in the Order or otherwise to the contrary, the Purchaser shall not be liable whether by way of indemnity, guarantee, or by reason of any breach of contract, or of statutory duty (to the fullest extent permitted at law) or by reason of tort (including but not limited to negligence) or any other legal principle or doctrine for any loss of profits, loss of use, loss of revenue or loss of anticipated savings, business interruption, loss of power, costs of capital or costs of replacement of power, increased costs of or loss of anticipated savings or for any financial or economic loss (whether direct or indirect) or for any consequential or indirect loss or damage whatsoever.

25.2 The Purchaser's total liability arising out of or in connection with the Order, howsoever caused and under any legal theory or doctrine, shall never exceed the price paid by the Purchaser for the Goods and/or Services.

26 GENERAL

26.1 Severance

If any provision of the Standard Terms and Conditions or the are declared by an judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, or indications to that effect are received by either of the parties from any competent authority, that provision will be severed from this Contract and the remaining provisions of the Order will remain in full force and effect unless the Purchaser decides that the effect of such severance is to defeat the original intention of the parties in which event the Purchaser will be entitled to terminate this Contract by thirty (30) days' notice to the Vendor.

26.2 Whole Agreement

Each party acknowledges that the Order contains the whole agreement between the parties in relation to the subject matter of their dealings and it has not relied upon any oral or written representation made to it by the other party, or its Personnel and has made its own independent investigations into all matters relevant to the subject matter of their dealings.

26.3 Supersedes prior Agreement

The Order supersedes any prior agreement between the parties whether written or oral and any such prior agreements are cancelled as at the commencement date but without prejudice to any rights which have already accrued to either of the parties.

26.4 Change of Address

Each of the parties will give notice to the other of the change or acquisition of any postal or email address or telephone, fax or similar number at the earliest possible opportunity but in any event within forty-eight (48) hours of such change or acquisition.

26.5 Interpretation

- (a) Headings contained in these General Terms and Conditions are for reference purposes only and will not be deemed to be any indication of the meaning of the clauses and sub clauses to which they relate.
- (b) The singular includes the plural and vice versa, and each gender includes every other gender.

26.6 Warranties by the Parties

Each of the parties warrants that it has the power to enter into this contract and has obtained all necessary resolutions and approvals to do so.

26.7 No Partnership

The parties are not partners or joint venturers.

26.8 The Purchaser's Right to Assign

This contract and all rights under it may be assigned or transferred by the Purchaser. The Vendor may not assign or otherwise transfer its rights without the prior written consent of the Purchaser.

26.9 Proper Law and Jurisdiction

The Order is governed by and construed with reference to the laws for the time being in force in New Zealand. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New Zealand, and of any courts that have jurisdiction to hear appeals from any of those courts, and waives any right to object to any proceedings being brought in those courts.

27.10 Rights Cumulative

All rights granted to the Purchaser are cumulative and no exercise by either of the parties of any right under the Order will restrict or prejudice the exercise of any other right granted by the Order or otherwise available to the Purchaser.

26.11 Waiver

The failure by the Purchaser to enforce at any time or for any period any one or more of the terms or conditions of this Contract is not a waiver of them or of the right at any time subsequently to enforce all terms and conditions of the Order.

26.12 Costs

Each of the parties will pay the costs and expenses incurred by it in connection with the Order.

27. Bribery and Corruption

27.1 Vendor hereby warrants that it will not, directly or indirectly, and it has no knowledge that other persons will, directly or indirectly, make any payment, gift or other commitment to its customers, to government officials or to agents, directors and employees of the Purchaser or any other party in a manner contrary to applicable laws (including but not limited to the U.S. Foreign Corrupt Practices Act and, where applicable, legislation enacted by member States and signatories implementing the OECD Convention Combating Bribery of Foreign Officials) and shall comply with all relevant laws, regulations, ordinances and rules regarding bribery and corruption.

27.2 Nothing in this order shall render the Purchaser liable to reimburse the Vendor for any such consideration given or promised.

27.3 The Vendor's material violation of any of the obligations contained in clause 27.1 above may be considered by the Purchaser to be a material breach of this order and shall entitle the Purchaser to terminate this order with immediate effect and without prejudice to any further right or remedies on the part of the Purchaser under this order or applicable law. The Vendor shall indemnify the Purchaser for all liabilities, damages, costs or expenses incurred as a result of any such violation of the above mentioned obligations and termination of this order.

27.4 The Vendor herewith acknowledges and confirms that it has received a copy of the Purchaser's Code of Conduct or has been provided information on how to access the Code of Conduct online. The Purchaser agrees to perform its contractual obligations under this Order with substantially similar standards of ethical behaviour.

27.5 The Purchaser has established the following reporting channels where the Vendor and its employees may report suspected violations of applicable laws, policies or standards of conduct:

Web portal: www.abb.com/ethics

Telephone: + 41 43 317 33 67 (international call rates apply)

Mail: address specified on the above Web portal