

ABB Subcontracted Service Terms and Conditions

1. **ACCEPTANCE OF TERMS AND CONDITIONS.** This Purchase Order is ABB Power Protection LLC (“Buyer”) offer to Service Provider (“Supplier”). At any time prior to its acceptance by Supplier, Buyer may revoke this Purchase Order by notifying Supplier orally or in writing. Upon Supplier’s acceptance of this Purchase Order, either by verbal or written acknowledgement or Supplier commences performance or performs any services specifically required by this Purchase Order, this Purchase Order (i) shall constitute a binding agreement between Supplier and Buyer, (ii) is expressly limited to the terms and conditions contained herein and none of Supplier’s terms and conditions in acknowledging or accepting this Purchase Order shall apply, (iii) may only be modified by a written agreement signed by duly authorized representatives of Supplier and Buyer and (iv) except as set forth on the face of this Purchase Order by Buyer, any different or additional terms and conditions on any acknowledgement and/or other document provided by Supplier to Buyer are hereby rejected and shall have no force and effect whatsoever. If there is an existing service related Agreement currently in effect between the Parties hereto, the terms and conditions of that certain service related Agreement shall supersede the terms and conditions stated hereinafter and shall solely govern the terms and conditions of this Purchase Order.
2. **DESCRIPTION OF SERVICES.** Supplier agrees to provide the Services using the highest professional standards and in a good and workmanlike manner to the satisfaction of Buyer and Buyer’s customer. Further, in performing Services for Buyer, Supplier shall use its own means of transportation, tools, supplies and methods of operation necessary to perform the Services (observing all applicable laws and regulations). Buyer shall direct all Services assigned to Supplier, including but not limited to, the coordination of the schedule of such Services.
 - a. Supplier must obtain prior written authorization from Buyer for any changes in the scope of the Service and/or changes in excess of this Buyer issued Purchase Order for such Services and whether or not any material effect on price result from the requested change. Buyer shall not be obligated to compensate Supplier for any unauthorized charges that do not have Buyer’s written authorization prior to the Service being completed.
 - b. Any additional repair recommendations must be communicated to Buyer in the form of a written proposal itemizing the additional costs for Buyer’s review and consideration. Upon receipt of a new Buyer issued Purchase Order, Supplier shall perform the additional Service as stated in the new Purchase Order. Any deviation from this shall result in payment delays, penalties, or a complete forfeiture of payment for Service performed.
 - c. Supplier shall warrant and guarantee the Service for not less than thirty (30) days against defects in labor and/or workmanship from the date of actual Service and against defects in parts for a period of ninety (90) from the date of installation during Service.
3. **PAYMENT.** Buyer shall pay Supplier within ninety (90) days of receipt of an acceptable invoice by Buyer. Notwithstanding anything to the contrary, supporting documentation such as a completed Field Service Report (FSR) and/or any and all applicable completed equipment maintenance checklists must be received by Buyer prior to Buyer remitting payment to Supplier for completed Service. Supplier’s invoice along with the aforesaid required documentation must be received by Buyer within three (3) business days of the Supplier completing the Service. Supplier shall not place Buyer on credit hold or deny continued Service in the event Supplier has not been paid due to Supplier not properly submitting the required supporting documentation to Buyer. Upon termination of this Purchase Order, payments under this paragraph shall cease; provided, however, that Supplier shall be entitled to payments for all service that is fully performed in accordance with the requirements of this Purchase Order prior to the date of the termination.
4. **TERMINATION.** This Purchase Order and/or any related Purchase Order issued hereunder may be terminated by either party for any reason upon thirty (30) days written notice to the other party which shall specify the termination date. This Purchase Order may also be terminated by one party on account of a material breach by the other party which is not cured by the breaching party within ten (10) days of receipt of written notice of the breach. In the event of an uncured breach, the termination shall be effective immediately following ten (10) days from the breaching party’s receipt of notice of the breach.
5. **EMPLOYMENT OF SUBCONTRACTOR(S).** Supplier may, at Supplier’s own expense, employ such subcontractors as Supplier deems necessary to perform the Service required of Supplier by this Purchase Order. However, Supplier covenants and agrees that it shall not subcontract any part of the Services hereunder without advance written approval of Buyer. Supplier shall remain liable for the performance of such subcontractor under this Purchase Order. Supplier shall require its subcontractor to maintain insurance coverage as described herein and shall further require that Supplier’s subcontractor issue a certificate of insurance naming Buyer as an additional insured. Buyer shall not control, direct or supervise Supplier’s subcontractors or employees in the performance of Services.
6. **RELATIONSHIP OF PARTIES.** It is expressly understood by the parties that Supplier is an independent contractor with respect to Buyer, and not an employee of Buyer.
7. **BENEFITS.** Supplier is engaged as an independent contractor; Buyer will not provide benefits, including health insurance benefits, or any other employee benefits, for the benefit of Supplier or Supplier’s employees, agents or assistants.
8. **FEDERAL, STATE AND LOCAL PAYROLL TAXES.** Neither federal, state, nor local income tax nor payroll taxes of any kind shall be withheld or paid by Buyer on behalf of Supplier or the employees of the Supplier. Supplier shall have sole responsibility for complying with all federal, state and local tax laws including, but not limited to, payment of all federal and state income taxes, sales taxes, social security taxes, unemployment taxes and SDI taxes.

9. **LICENSING AND SIMILAR REQUIREMENTS.** If licensing and other similar requirements are necessary in order to perform any of the Services to be performed hereunder, Supplier shall have sole responsibility for compliance therewith. Supplier will provide Buyer with proof of such compliance before Services are rendered. Failure to do so will constitute a material breach of this Purchase Order.
10. **REGISTRATION.** The Supplier is responsible for registering and filing reports with federal, state and local governments, if required by law or regulation, in connection with Supplier's activities on behalf of Buyer. The reports must be filed in an accurate and timely manner at Supplier's expense. Supplier will forward copies of all reports to Buyer, immediately upon filing. Supplier will provide all necessary information and assistance to Buyer in a timely and accurate fashion to enable Buyer to comply with its filing and registration obligations. Supplier warrants that Supplier has secured and will maintain all necessary licenses, certifications or registrations required by law.
11. **COMPLIANCE WITH LAWS.** Supplier represents and warrants that Supplier's performance of each order or release will be in strict conformance with all applicable federal, state and local laws, statutes, ordinances and regulations, including, but not limited to, the standards promulgated under the Occupational Safety and Health Act, as amended; Executive Order Nos. 11246, 11625, 11701, 11758 and 12138; Section 503 of the Rehabilitation Act of 1973, as amended; the Vietnam Era Veteran's Readjustment Assistance Act of 1974, as amended, 29 CFR Part 471, Appendix A to Subpart A (Executive Order 13496); the Veteran's Compensation, Education and Employment Amendments of 1982; the E-Verify program as authorized by Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (8 U.S.C. §1324a note); and the rules, regulations, and relevant orders of the Secretary of Labor pertaining to said Executive Orders, including, but not limited to, all provisions of Chapter 60 of Title 41 of the Code of Federal Regulations which are incorporated herein by reference as if set forth verbatim and are made an express part of this Purchase Order.

Supplier warrants that it will not, directly or indirectly, and that it has no knowledge that other persons will, directly or indirectly, make any payment, gift or other commitment to its customers, to government officials or to agents, directors and employees of Buyer and its affiliates 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. Nothing herein shall render Buyer or its affiliates liable to reimburse Supplier for any such consideration given or promised. Supplier's material violation of any of the obligations contained in this paragraph may be considered by Buyer to be a material breach of these Terms and Conditions and shall entitle Buyer to terminate all transactions with Supplier with immediate effect and without prejudice to any further right or remedies on the part of Buyer under these Terms and Conditions or applicable law. Supplier shall indemnify Buyer and its affiliates for all liabilities, damages, costs or expenses incurred as a result of any such violation of this paragraph.

12. **CODE OF CONDUCT.** Supplier acknowledges and confirms that it has received a copy of ABB's Code of Conduct and the ABB Supplier Code of Conduct or has been provided information on how to access such Codes of Conduct online. Supplier agrees to perform its contractual obligations under this Purchase Order with substantially similar standards of ethical behavior. ABB has established the following reporting channels where Supplier and its employees may report suspected violations of applicable laws, policies or standards of conduct:

Web portal: www.abb.com/integrity
Telephone: + 41 43 317 33 67
E-mail: ethics.contact@ch.abb.com
Mail: ABB Ltd, Legal & Integrity, Affolternstrasse 44, 8050 Zurich, Switzerland

13. **INDEMNIFICATION.** Supplier shall indemnify and hold harmless Buyer and Buyer's customer(s) and each of their respective affiliates, officers, directors, shareholders, employees, representatives and agents from, and against, any and all claims, damages, liabilities, costs and/or expenses, including reasonable attorney's fees, that arise or are alleged to arise from the acts, omissions, negligence and/or willful misconduct of Supplier or Supplier's subcontractors in the performance (or non-performance) of the Services associated with this Purchase Order except to the extent caused by the negligence or willful misconduct of Buyer. Supplier's obligation to indemnify and hold harmless will survive the termination of this Purchase Order.
14. **INSURANCE.** At all times while performing the Services, Supplier shall maintain, at its sole cost and expense the insurance set forth below and incorporated by reference herein, from insurance companies and in a form reasonably satisfactory to Buyer with limits of liability not less than stated below. Buyer shall have the right to inspect and review the policies in their entirety and shall be provided with copies upon request. Compliance by the Supplier with the foregoing requirements shall not in any way relieve the Supplier from any liability or diminish its obligations as stated herein. Prior to Supplier's commencement of any Services, and without limiting Supplier's duty to indemnify Buyer, Supplier shall maintain all insurance set forth below and any insurance and/or bonds required by law. Supplier shall submit the Certificate(s) of Insurance acceptable to Buyer evidencing the insurance requirements stated herein. Buyer may terminate this Purchase Order and/or withhold payments to Supplier until a Certificate of Insurance, evidencing the following insurance coverage is received by Supplier:

(i) worker's compensation insurance as prescribed by the law of the state(s) in which Supplier's Services under this Purchase Order shall be performed;

(ii) employer's liability insurance shall provide coverage with limits no less than:
\$1,000,000 Each Accident
\$1,000,000 Disease – Each Employee
\$1,000,000 Disease – Policy Limit

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(iii) commercial general liability insurance (including, but not limited to, contractual liability insurance) on an occurrence basis. Insurance for liability shall provide coverage with limits no less than:

\$1,000,000 Each Occurrence Bodily Injury and Property Damage
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations
\$1,000,000 Personal and Advertising Injury
\$ 300,000 Fire Legal Liability
\$ 5,000 Medical

(iv) automobile liability insurance (covering all owned, hired, leased, borrowed and non-owned automobiles used in performance of the Supplier's work) with combined single limit of at least \$1,000,000 each occurrence; and

(v) excess liability insurance with limits of not less than \$10,000,000 each occurrence and general aggregate, and

(vi) if Buyer's customer requires higher limits, broader provisions, or other forms of insurance coverage, Supplier shall comply with such requirements at Supplier's own expense. Examples of other forms of insurance coverage that may be required are Fidelity, Pollution, and Professional Liability.

The said certificate shall contain a provision that coverage afforded under the policies will not be cancelled, non-renewed or reduced until at least thirty (30) days prior written notice has been given to Buyer by mail. If any of such coverage is cancelled, non-renewed or reduced, Supplier shall immediately and at its expense furnish Buyer with a replacement insurance certificate that complies with the provisions this Purchase Order.

Supplier shall ensure that its insurer(s) provide Buyer new certificates, at least thirty (30) days prior to the expiration of any identified policy, evidencing the renewal of such policy or the issuance of a new replacement policy.

All such required insurance policies shall be issued by companies licensed or authorized to transact business in the states where the services are to be rendered and who hold a current rating of not less than "A vii", according to Best's Key Rating Guide, unless this requirement is expressly waived in writing by Buyer.

ABB Power Protection LLC, its affiliates and each of their respective directors, officers, and employees and ABB Power Protection LLC customer (and any beneficiaries as their interests may appear) as identified as per written contract shall be named as Additional Insured on all policies, except for worker's compensation and professional liability insurance. All policies shall contain a Waiver of Subrogation in favor of the Additional Insured's. Coverage shall be primary and non-contributory on all liability policies. The Certificate must have the following endorsements attached: additional insured (CG 2010 11/85 or its equivalent).

The Supplier shall furnish satisfactory evidence that its subcontractors have purchased said insurance by causing a certificate of insurance to be furnished to Buyer prior to the subcontractor commencing with any Services.

Compliance by the Supplier with the foregoing requirements shall not in any way relieve the Supplier from any liability or diminish its obligations as stated herein.

Within twenty-four (24) hours of all accidents or occurrences resulting in injury to the Supplier's employees or third parties or damage to property of another, the Supplier shall submit a written report to Buyer. When requested by Buyer, the Supplier shall furnish a copy of any reports prepared for submission to the Supplier's insurance Buyer.

Certificate of Insurance shall name ABB Power Protection LLC as Certificate Holder. Additional Certificate Holders shall be identified as required.

ABB Power Protection LLC
525 Junction Road, Suite 3200
Madison, WI 53717

15. **CONFIDENTIAL INFORMATION.** In connection with the performance of this Purchase Order, it may be necessary for Buyer and Supplier to disclose to each other some "Confidential Information." The term "Confidential Information" means proprietary techniques and confidential information that Buyer and Supplier have or will develop, compile or own or that Buyer and Supplier receive under conditions of confidentiality. Such information includes but is not limited to customer lists and related customer information, marketing plans, business plans, training techniques and manuals, strategies, forecasts, unpublished financial information, budgets, projections, inventions, discoveries, improvements and related information. Buyer and Supplier hereby agree that they shall use such Confidential Information solely in connection with their performance pursuant to the terms of this Purchase Order and for no other purpose. Moreover, Buyer and Supplier shall not disclose to any third party any Confidential Information each receives from the other party, other than as absolutely necessary in connection with the performance of this Purchase Order. These obligations undertaken by Buyer and Supplier shall continue during the term of this Purchase Order and thereafter for as long as the Confidential Information remains confidential.

16. **NO COMPETITION** During the term of this Purchase Order, and for a period of one (1) year after its expiration or termination, in order to maintain and preserve an excellent working relationship with Buyer, Supplier shall not directly or indirectly, on Supplier's own behalf or on behalf of any third party, solicit, call, entice, induce or in any other way encourage any Customer to: (i) terminate or diminish its relationship or business activities with Buyer; (ii) seek to persuade any Customer of Buyer to conduct any business or activity with a third party that such Customer is contemplating conducting with Buyer; or (iii) otherwise interfere with Buyer's relationship with any of its Customers. Customer means any end-

user of Equipment existing during the term of this Purchase Order whereas Buyer is identified as the current incumbent to provide maintenance, remedial, or related services for uninterruptible power supply equipment. Any solicitations initiated prior to the date of the execution of this Purchase Order shall not be deemed breach of this non-competition clause.

17. **NON-SOLICITATION.** During the term of this Purchase Order and for a period of one (1) year after its expiration or termination, neither party will directly or indirectly, solicit for employment by itself (or any of its affiliates) any employee of the other party (or any of its affiliates), without such other party's prior written consent. The actual damages attributable to a breach of the provisions of this paragraph would be difficult to determine and prove. Accordingly, the parties agree that if either party breaches this paragraph, the other party will promptly pay the non-breaching party liquidated damages in an amount equal to the employee's annual salary (including bonuses and incentive compensation) prior to the breach, such sum being a reasonable measure of the damages reasonably anticipated by the parties.
18. **REMEDIES.** The parties agree that the parties will be damaged by a violation of Sections 15 and 16 above and that the amount of such damage may be difficult to measure. Each party agrees that if the other party commits or threatens to commit a breach of any of the covenants and agreements contained in Sections 15 and 16 then the non-breaching party shall have the right to seek and obtain all appropriate injunctive and other equitable remedies, without posting bond therefore except as required by law, in addition to any other rights and remedies that may be available at law, it being acknowledged and agreed that any such breach would cause irreparable injury to the non-breaching party and that money damages alone would not provide an adequate remedy.
19. **ENFORCEMENT.** If at the time of enforcement of Section 16 above, a Court shall hold that the duration, scope, area or activity restrictions stated hereunder are unreasonable under circumstances then existing, the parties agree that the maximum duration, scope, area or restrictions reasonable and enforceable under such circumstances shall be substituted for the started duration, scope, area or activity restrictions.
20. **JURISDICTION AND VENUE.** The parties consent to jurisdiction in Wisconsin. Venue for the resolution of any dispute that arises under or relates to this Purchase Order shall be exclusively in the state or federal courts located in Dane County, Wisconsin and the parties expressly waive any right they may otherwise have to cause any such action or proceeding to be brought or tried elsewhere, including but not limited to, the right to contest the jurisdiction or venue on the basis of inconvenience of forum.
21. **ATTORNEYS' FEES.** In the event any litigation, arbitration or other proceeding is instituted by which one party either seeks to enforce its rights under this Purchase Order or seeks a declaration of any rights or obligations under this Purchase Order, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs in connection with such action.
22. **SEVERABILITY.** If any provision of this Purchase Order shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Purchase Order is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
23. **WAIVER.** The failure of either party to enforce any provision of this Purchase Order shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with any other provision of this Purchase Order.
24. **NOTICES.** All notices required or permitted under this Purchase Order shall be in writing and shall be deemed delivered when (1) delivered in person or (2) sent by facsimile and deposited in the United States mail, postage prepaid, addressed as follows: ABB Power Protection LLC, Attn: Legal, 525 Junction Road, Suite 3200 Madison, WI 53717. Such address may be changed from time to time.
25. **ENTIRE AGREEMENT.** THIS PURCHASE ORDER AND ANY EXHIBITS ATTACHED HERETO CONSTITUTE THE FINAL, COMPLETE AND EXCLUSIVE STATEMENT OF THE TERMS AND CONDITIONS BETWEEN BUYER AND SUPPLIER PERTAINING TO THE SUBJECT MATTER OF THIS PURCHASE ORDER AND SHALL PREVAIL UNLESS OTHERWISE EXPRESSLY NOTED IN WRITING AND SIGNED BY BUYER. NO PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, NOR IS ANY PARTY RELYING ON, ANY REPRESENTATION OR WARRANTY OUTSIDE THOSE EXPRESSLY SET FORTH IN THIS PURCHASE ORDER. NO VERBAL REPRESENTATION OF ANY SALESPERSON, AGENT, OFFICER, OR EMPLOYEE OF EITHER PARTY SHALL OPERATE TO VARY THE WRITTEN TERMS HEREOF. ANY ALTERATIONS OR MODIFICATIONS MUST BE IN WRITING, REFERENCE THIS PURCHASE ORDER, AND BE SIGNED BY BOTH PARTIES DULY AUTHORIZED REPRESENTATIVES.

(rev 10/01/2018)