

# **ATTACHMENT A**

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Quote dated: 3/1/2021- good through 4/30/21

Quote Number: QT-21-00742418

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**To:**

**Noah Caracciolo**

**From:**

**ABB Enterprise Software Inc.**  
**c/o Pacific Utilities**  
**1140 Willow Pass Ct**  
**Concord, CA 94520**  
Phone: 760-224-2112  
Fax:  
Email: Rose@PacificUtilities.com

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**ABB Quote Number: QT-21-00742418**

**Project:** Victorville 10mva duplicate

In response to your request for quotation we are pleased to offer the following:

Item	Alt	Qty	Description	Price Each (USD)
2		3	10000 KVA Natural Ester Fluid Filled Substation (Activity Location: 9AAE328382, PDC: 9AAF408598, DTAN-L3L147)	224,600.00

Total for 3 Transformers- \$673,800

Victorville Tax 8.75%: \$58,957.50

**Grand total for 3 transformers with Victorville tax: \$732,757.50**

**Revision – 3/1/2021:**

The price can be reduced to \$222,600 per transformer if a quantity of three transformers are purchased.

**Revision – 4/14/21:**

Pricing to summarize total cost of 3 transformers with local tax.

**Item 2**

Qty	Description	Price (Net Each)
3	10000 KVA Natural Ester Fluid Filled Substation	224,600.00 USD
3 Phase 60 Hertz, 65 Degree C Rise, KNAN/KNAF Future 30 Average / 40 Maximum Ambient 7 Percent Impedance with +/- ANSI Standard Tolerance Phase relation Dyn1 3300 Feet Maximum Altitude 68 dB(a) Guaranteed Sound Level (ONAN) Typical Losses: No Load 15,250 Watts, Total 65,500 Watts		

**HIGH VOLTAGE 34500 Delta**

150 KV BIL  
Taps: +2 -2 2.5%  
Copper Conductor  
Wall Mounted Bushings in ANSI Segment 2  
Three 600 Amp Bolted Non-Loadbreak 150kV BIL Bushings  
Bottom Entrance Free Standing Air Terminal Chamber (Mild Steel)

**LOW VOLTAGE 12470Y/7200**

95 KV BIL  
Copper Conductor  
Wall Mounted Bushings in ANSI Segment 4  
Three 600 Amp Bolted Non-Loadbreak 150kV BIL Bushings  
Wall Mounted Porcelain Neutral Bulk Bushing  
Bottom Entrance Free Standing Air Terminal Chamber (Mild Steel)

**CORE/COIL**

Parking Stands - Radial Feed  
External Core Ground

**DOCUMENTS**

Warranty 18 Months from Shipment or 12 Months from Energization, Whichever Occurs First

**DUTY**

Seismic per IEEE 693-2005 with Seismic Qualification Level = "High"  
Outdoor Service

**FINISH**

Non-Skid Paint on Cover  
Undercoating Tank Base + 1" Up Side  
Paint System 1 Meets IEEE C57.12.28 and C4H (ISO12944)  
Paint Color ANSI 61 Light Gray  
Paint Thickness 9 Mils

**FITTINGS**

1" Upper Filter Press Valve  
2" Drain Valve with 3/8" Sampler Valve

**MONITORING**

Dial Type Thermometer  
Pressure Vacuum Gauge  
Pressure Relief Device with Semaphore  
Liquid Level Gauge

## **TANK**

Removable 20.5" Galvanized Radiators not painted  
Provisions for Mounting a Tether Pole on the Tank Cover  
Flat Bottom Base  
Cork Neoprene - All Gauge Gaskets  
12" x 24" Bolted Handhole  
Sealed Air Oil Preservation System  
Stainless Steel Ground Pads

## **TEST**

Routine Tests as per C57.12.00 Table 17 for Class I Power Transformer  
Core to Ground Insulation Resistance Test

## **Item 2 General Comments and Exceptions**

1. Quote is for an up to date duplicate of BS00129. Radiators will be Galvanized Panel and not tubular. Please advise if modifications or clarifications are required.
2. See attached sketch of proposed transformer.
3. Quoting a Stacked Core/ Layer Wound Coil Design. HV will be Copper Strap. LV will be Copper Sheet.
4. Transformers are designed, built and tested per the latest applicable sections of ANSI, IEEE, NEMA, and CSA Standards. Exception taken to local, state, and other codes.
5. All tests will be made in accordance with the latest revision of IEEE standard Test code C57.12.90, where applicable.
6. De-energized Tap Changer Handle will be at a height convenient to the design.
7. Air Terminal Chambers are removed for shipment and will require some assembly by others.
8. Off-loading, installation, training, field services, and field testing are not included.
9. Natural Ester is quoted in reference to the oil characteristics/properties as defined in oil manufacturer's technical data sheet, any specific requirements or target values on any property (physical/electrical/chemical) which are not suggested & defined by oil manufacturer are quoted as an exception. Oil shall be tested against parameters defined in OEM technical data sheet only.
10. The transformer will be designed and manufactured in accordance with IEEE Standard 693-2005 at the 'high' seismic. No Seismic Analysis is being provided.

## **Lead Times**

Drawing Submittal	: 5-5 Weeks after receipt of order.
Approval Order (Shipment)	: 20-22 Weeks after return of approved drawings.
Firm Order (Shipment)	: 20-22 Weeks after receipt of order.

Quoted drawing and shipment lead times are based on current production levels. Actual lead times are dependent on available production space at time of order entry and/or release to manufacturing.

Transformers are designed, built, and tested to ANSI/IEEE C57 Transformer Standards. No other Codes/Standards apply (NEC, NESC, etc.) unless noted on quote.

**\*\* GENERAL TERMS AND CONDITIONS OF SALE \*\***

This quotation is effective for 30 days from 2/26/2021, unless otherwise authorized by ABB.

Unless stated otherwise in this quotation, the following terms and conditions of sale will apply.

1. Shipment is CPT - Carriage Paid to Victorville, CA – Incoterms 2010
2. Payment is due in 60 days invoice date from invoice date.
3. Terms and conditions of sale are based upon ABB Enterprise Software Inc. General Terms and Conditions of Sale.
4. Escalation: Firm Orders: Prices are valid for quoted shipment on orders entered for immediate release and manufacture. Approval Orders: Prices are valid for 60 days from the initial mailing date of approval drawings. Prices are valid for quoted shipment or best available lead-time at time of release. Orders on hold pending drawing approval beyond 60 days of initial drawing date are subject to price adjustment every 30 days.
5. ABB may transfer or assign, directly or indirectly, all of its rights or obligations under this agreement without the prior written consent of the other party to another legal entity of ABB Group. This agreement, and the obligations hereunder, shall be binding upon the parties hereto, their successors and permitted assigns.
6. ABB's bid is based on the pricing of commodities in effect on the date of the bid. In the event of a change in law including proposed tariff increases impacting ABB's bid price, ABB reserves the right to adjust its offering to reflect the change.

ABB Enterprise Software requires customer to approve and return drawings within 2 weeks of submittal. Return of these drawings after the 2-week period may result in schedule delays. Shipments and drawing dates are subject to prior sales.

If applicable, the carrier will remove digital impact recorders from the transformer once the unit is offloaded from the truck. Impact data is available for up to two years from the date of delivery.

Delivery - If the scheduled delivery of Equipment is delayed by the Purchaser for more than three (3) days, ABB may move the Equipment to an external storage facility for the account of and at the risk of Purchaser whereupon it shall be deemed to be delivered. Purchaser shall reimburse seller for all costs of storage and handling incurred by seller. Storage and handling fees will be invoiced for payment on a monthly basis, until the Purchaser is able to accept delivery of the Equipment. Storage and handling fees are shown below. Storage fees include monthly inspections and preventive maintenance. The warranty period will begin once the transformer is placed into storage.

**Storage Fees**

Weekly Storage Fee
\$1,500 Per Week Per Transformer

**Handling Fees**

Transformer Weight	Crane Charge
32,500 Pounds & below	\$8,000
32,501-55,000 Pounds	\$13,200
55,001-75,000 Pounds	\$23,200
75,001-99,500 Pounds	\$27,600
99,501-115,000 Pounds	\$44,000

Included in the handling fees are the off-loading at the storage facility and loading onto truck and trailer for transport.

We appreciate the opportunity to quote on this business. The ABB Small Power Transformers has had many years of experience building reliable, high quality transformers and we look forward to supplying this equipment. If there are any questions regarding this quotation or any other matter relating to this job please call me at your convenience.

ABB will supply drawings by E-Mail only. If customer desires paper copies of drawings add \$100 to the order for processing and handling. Maximum number of paper copies will be five(5).

## ***SPRAY PAINT SYSTEM***

### **Metal Preparation:**

- A. Pickled and oiled steel 0.180 inches thick and non-pickled and oiled steel Greater than 0.180 inches thick.
  - 1. Non-pickled and oiled steel is shot blasted before forming.
  - 2. Remove weld splatter and other foreign materials after welding fabrication.
  - 3. Tank is shot blasted.
  - 4. Tank is cleaned and phosphatized with an iron-phosphate and detergent solution.

### **Painting:**

- A. Primer coat to inhibit rust formation.
  - 1. White epoxy primer designed for industrial applications where excellent corrosion resistance is required.
  - 2. Cured in ambient atmosphere.
- B. Topcoat for attractive appearance and to prevent chalking.
  - 1. Air spray SuperShield: Acrylic Polyester, isocyanate free urethane coatings.
  - 2. Cured in ambient atmosphere.
- C. Meets the following parameters.
  - 1. Total dry film thickness is 9 mils minimum.
  - 2. Meets 1500 hours salt spray requirements per ASTM B-117-90 test.
  - 3. Meets 1000 hours humidity requirements per ASTM D4585-87 test.
  - 4. Meets 500 hours Ultraviolet accelerated weathering (QUV) per ASTM D4587
  - 5. Meets or exceeds ANSI C57.12.28 and (ISO 12944-C4-High) paint test requirements.
- D. Available only with removable coolers or no coolers.
- E. Provides superior corrosion protection to all other known transformer paint systems.
  - 1. Difficult to nick or scratch.
  - 2. Extensive testing performed.

## TRANSFORMER PERFORMANCE DATA

Quote Number: **QT-21-00742418**

Item Number: **2**

KVA: 10000

Fluid: Natural Ester Fluid

Hertz: 60

Impedance: 7 Percent Impedance with +/- ANSI Standard Tolerance

Rise: 65

Cooling Class: KNAN/KNAF Future

**Stated losses are typical for reference purposes only.**

% Load	% Efficiency	No-load Loss	Load Loss	Total Loss
25	99.27	15250	3141	18391
50	99.45	15250	12563	27813
75	99.42	15250	28266	43516
100	99.35	15250	50250	65500
112	99.31	15250	63034	78284
140.0		15250		

\* Efficiency is calculated at unity Power Factor

### Regulation with a Lagging Power Factor

Power Factor	% Load	
	100	125
100	0.75	1.28
95	2.87	3.90
90	3.68	4.89
85	4.27	5.60
80	4.73	6.16
75	5.12	6.63
70	5.44	7.01

\*Regulation Based On:

% X = 6.9819

% R = 0.5025

% X/R = 13.8943

% Fe = 0.1525

### Excitation Current

% Volts	No-load Loss	%Exciting Current
80	9150	0.38
90	12200	0.69
100	15250	1.22
105	18300	1.98
110	22875	4.58

### Efficiencies At other Power Factors

% Load	Power Factor				
	1.00	0.95	0.90	0.85	0.80
25	99.27	99.23	99.19	99.14	99.09
50	99.45	99.42	99.39	99.35	99.31
75	99.42	99.39	99.36	99.32	99.28
100	99.35	99.32	99.28	99.24	99.19
112	99.31	99.27	99.23	99.18	99.13
140.0	99.19	99.15	99.11	99.05	98.99

**ABB Enterprise Software Inc.**  
**GENERAL TERMS AND CONDITIONS OF SALE**

**1. General.** The terms and conditions contained herein, together with any additional or different terms contained in ABB's Proposal, if any, submitted to Purchaser (which Proposal shall control over any conflicting terms), constitute the entire agreement (the "Agreement") between the parties with respect to the order and supersede all prior communications and agreements regarding the order. Acceptance by ABB of the order, or Purchaser's acceptance of ABB's Proposal, is expressly limited to and conditioned upon Purchaser's acceptance of these terms and conditions, payment for or acceptance of any performance by ABB being acceptance. These terms and conditions may not be changed or superseded by any different or additional terms and conditions proposed by Purchaser to which terms ABB hereby objects. Unless the context otherwise requires, the term "Equipment" as used herein means all of the equipment, parts, accessories sold, and all software and software documentation, if any, licensed to Purchaser by ABB ("Software") under the order. Unless the context otherwise requires, the term "Services" as used herein means all labor, supervisory, technical and engineering, installation, repair, consulting or other services provided by ABB under the order. As used herein, the term "Purchaser" shall include the initial end use of the Equipment and/or services; provided, however, that Paragraph 13(a) shall apply exclusively to the initial end user.

**2. Prices.**

- (a) Unless otherwise specified in writing, all Proposals expire thirty (30) days from the date thereof.
- (b) Unless otherwise stated herein, Services prices are based on normal business hours (8 a.m. to 5 p.m. Monday through Friday). Overtime and Saturday hours will be billed at one and one-half (1 1/2) times the hourly rate; and Sunday hours will be billed at two (2) times the hourly rate; holiday hours will be billed at three (3) times the hourly rate. If a Services rate sheet is attached hereto, the applicable Services rates shall be those set forth in the rate sheet. Rates are subject to change without notice.
- (c) The price does not include any federal, state or local property, license, privilege, sales, use, excise, gross receipts, or other like taxes which may now or hereafter be applicable. Purchaser agrees to pay or reimburse any such taxes which ABB or its suppliers are required to pay or collect. If Purchaser is exempt from the payment of any tax or holds a direct payment permit, Purchaser shall, upon order placement, provide ABB a copy, acceptable to the relevant governmental authorities of any such certificate or permit.
- (d) The price includes customs duties and other importation or exportation fees, if any, at the rates in effect on the date of ABB's Proposal. Any change after that date in such duties, fees, or rates, shall increase the price by ABB's additional cost.

**3. Payment.**

- (a) Unless specified to the contrary in writing by ABB, payment terms are net cash, payable without offset, in United States Dollars, 30 days from date of invoice by wire transfer to the account designated by ABB in the Proposal.
- (b) If in the judgment of ABB, the financial condition of Purchaser at any time prior to delivery does not justify the terms of payment specified, ABB may require payment in advance, payment security satisfactory to ABB, or may terminate the order, whereupon ABB shall be entitled to receive reasonable cancellation charges. If delivery is delayed by Purchaser, payment shall be due on the date ABB is prepared to make delivery. Delays in delivery or nonconformities in any installments delivered shall not relieve Purchaser of its obligation to accept and pay for remaining installments.
- (c) Purchaser shall pay, in addition to the overdue payment, a late charge equal to the lesser of 1 1/2% per month or any part thereof or the highest applicable rate allowed by law on all such overdue amounts plus ABB's attorneys' fees and court costs incurred in connection with collection.

**4. Changes.**

- (a) Any changes requested by Purchaser affecting the ordered scope of work must be accepted by ABB and resulting adjustments to affected provisions, including price, schedule, and guarantees mutually agreed in writing prior to implementation of the change.
- (b) ABB may, at its expense, make such changes in the Equipment or Services as it deems necessary, in its sole discretion, to conform the Equipment or Services to the applicable specifications. If Purchaser objects to any such changes, ABB shall be relieved of its obligation to conform to the applicable specifications to the extent that conformance may be affected by such objection.

**5. Delivery.**

- (a) All Equipment manufactured, assembled or warehoused in the continental United States is delivered F.O.B. point of shipment. Equipment shipped from outside the continental United States is delivered F.O.B. United States port of entry. Purchaser shall be responsible for any and all demurrage or detention charges.
- (b) If the scheduled delivery of Equipment is delayed by Purchaser or by Force Majeure, ABB may move the Equipment to storage for the account of and at the risk of Purchaser whereupon it shall be deemed to be delivered.
- (c) Shipping and delivery dates are contingent upon Purchaser's timely approvals and delivery by Purchaser of any documentation required for ABB's performance hereunder.
- (d) Claims for shortages or other errors in delivery must be made in writing to ABB within ten days of delivery. Equipment may not be returned except with the prior written consent of and subject to terms specified by ABB. Claims for damage after delivery shall be made directly by Purchaser with the common carrier.

**6. Title & Risk of Loss.** Except with respect to Software (for which title shall not pass, use being licensed) title to Equipment shall remain in ABB until fully paid for. Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, risk of loss or damage shall pass to Purchaser upon delivery.

**7. Inspection, Testing and Acceptance.**

- (a) Any inspection by Purchaser of Equipment on ABB's premises shall be scheduled in advance to be performed during normal working hours.
- (b) If the order provides for factory acceptance testing, ABB shall notify Purchaser when ABB will conduct such testing prior to shipment. Unless Purchaser states specific objections in writing within ten (10) days after completion of factory acceptance testing, completion of the acceptance test constitutes Purchaser's factory acceptance of the Equipment and its authorization for shipment.
- (c) If the order provides for site acceptance testing, testing will be performed by ABB personnel to verify that the Equipment has arrived at site complete, without physical damage, and in good operating condition. Completion of site acceptance testing constitutes full and final acceptance of the Equipment. If, through no fault of ABB, acceptance testing is not completed within thirty (30) days after arrival of the Equipment at the site, the site acceptance test shall be deemed completed and the Equipment shall be deemed accepted.

**8. Warranties and Remedies.**

**(a) Equipment and Services Warranty.** ABB warrants that Equipment (excluding Software, which is warranted as specified in paragraph (d) below) shall be delivered free of defects in material and workmanship and that Services shall be free of defects in workmanship. The Warranty Remedy Period for Equipment (excluding Software, Spare Parts and Refurbished or Repaired Parts) shall end twelve (12) months after installation or eighteen (18) months after date of shipment, whichever first occurs. The Warranty Remedy Period for new spare parts shall end twelve (12) months after date of shipment. The Warranty Remedy Period for refurbished or repaired parts shall end ninety (90) days after date of shipment. The Warranty Remedy Period for Services shall end ninety (90) days after the date of completion of Services.

**(b) Equipment and Services Remedy.** If a nonconformity to the foregoing warranty is discovered in the Equipment or Services during the applicable Warranty Remedy Period, as specified above, under normal and proper use and provided the Equipment has been properly stored, installed, operated and maintained and written notice of such nonconformity is provided to ABB promptly after such discovery and within the applicable Warranty Remedy Period, ABB shall, at its option, either (i) repair or replace the nonconforming portion of the Equipment or re-perform the nonconforming Services or (ii) refund the portion of the price applicable to the nonconforming portion of Equipment or Services. If any portion of the Equipment or Services so repaired, replaced or re-performed fails to conform to the foregoing warranty, and written notice of such nonconformity is provided to ABB promptly after discovery and within the original Warranty Remedy Period applicable to such Equipment or Services or 30 days from completion of such repair, replacement or re-performance, whichever is later, ABB will repair or replace such nonconforming Equipment or re-perform the nonconforming Services. The original Warranty Remedy Period shall not otherwise be extended.

**(c) Exceptions.** ABB shall not be responsible for providing working access to the nonconforming Equipment, including disassembly and re-assembly of non-ABB supplied equipment, or for providing transportation to or from any repair facility, all of which shall be at Purchaser's risk and expense. ABB shall have no obligation hereunder with respect to any Equipment which (i) has been improperly repaired or altered; (ii) has been subjected to misuse, negligence or accident; (iii) has been used in a manner contrary to ABB's instructions; (iv) is comprised of materials provided by or a design specified by Purchaser; or (v) has failed as a result of ordinary wear and tear. Equipment supplied by ABB but manufactured by others is warranted only to the extent of the manufacturer's warranty, and only the remedies, if any, provided by the manufacturer will be allowed.

**(d) Software Warranty and Remedies.** ABB warrants that, except as specified below, the Software will, when properly installed, execute in accordance with ABB's published specification. If a nonconformity to the foregoing warranty is discovered during the period ending one (1) year after the date of shipment and written notice of such nonconformity is provided to ABB promptly after such discovery and within that period, including a description of the nonconformity and complete information about the manner of its discovery, ABB shall correct the nonconformity by, at its option, either (i) modifying or making available to the Purchaser instructions for modifying the Software; or (ii) making available at ABB's facility necessary corrected or replacement programs. ABB shall have no obligation with respect to any nonconformities resulting from (i) unauthorized modification of the Software or (ii) Purchaser-supplied software or interfacing. ABB does not warrant that the functions contained in the software will operate in combinations which may be selected for use by the Purchaser, or that the software products are free from errors in the nature of what is commonly categorized by the computer industry as "bugs".

**(e) THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WHETHER WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USAGE OF TRADE ARE HEREBY DISCLAIMED. THE REMEDIES STATED HEREIN CONSTITUTE PURCHASER'S EXCLUSIVE REMEDIES AND ABB'S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY.**



## 9. Patent Indemnity.

(a) ABB shall defend at its own expense any action brought against Purchaser alleging that the Equipment or the use of the Equipment to practice any process for which such Equipment is specified by ABB (a "Process") directly infringes any claim of a patent of the United States of America and to pay all damages and costs finally awarded in any such action, provided that Purchaser has given ABB prompt written notice of such action, all necessary assistance in the defense thereof and the right to control all aspects of the defense thereof including the right to settle or otherwise terminate such action in behalf of Purchaser.

(b) ABB shall have no obligation hereunder and this provision shall not apply to: (i) any other equipment or processes, including Equipment or Processes which have been modified or combined with other equipment or process not supplied by ABB; (ii) any Equipment or Process supplied according to a design, other than an ABB design, required by Purchaser; (iii) any products manufactured by the Equipment or Process; (iv) any patent issued after the date hereof; or (v) any action settled or otherwise terminated without the prior written consent of ABB.

(c) If, in any such action, the Equipment is held to constitute an infringement, or the practice of any Process using the Equipment is finally enjoined, ABB shall, at its option and its own expense, procure for Purchaser the right to continue using said Equipment; or modify or replace it with non-infringing equipment or, with Purchaser's assistance, modify the Process so that it becomes non-infringing; or remove it and refund the portion of the price allocable to the infringing Equipment. THE FOREGOING PARAGRAPHS STATE THE ENTIRE LIABILITY OF ABB AND EQUIPMENT MANUFACTURER FOR ANY PATENT INFRINGEMENT.

(d) To the extent that said Equipment or any part thereof is modified by Purchaser, or combined by Purchaser with equipment or processes not furnished hereunder (except to the extent that ABB is a contributory infringer) or said Equipment or any part thereof is used by Purchaser to perform a process not furnished hereunder by ABB or to produce an article, and by reason of said modification, combination, performance or production, an action is brought against ABB, Purchaser shall defend and indemnify ABB in the same manner and to the same extent that ABB would be obligated to indemnify Purchaser under this "Patent Indemnity" provision.

## 10. Limitation of Liability.

(a) In no event shall ABB, its suppliers or subcontractors be liable for special, indirect, incidental or consequential damages, whether in contract, warranty, tort, negligence, strict liability or otherwise, including, but not limited to, loss of profits or revenue, loss of use of the Equipment or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, delays, and claims of customers of the Purchaser or other third parties for any damages. ABB's liability for any claim whether in contract, warranty, tort, negligence, strict liability, or otherwise for any loss or damage arising out of, connected with, or resulting from this Agreement or the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, repair, replacement, installation, technical direction of installation, inspection, operation or use of any equipment covered by or furnished under this Agreement, or from any services rendered in connection therewith, shall in no case (except as provided in the section entitled "Patent Indemnity") exceed one-half (1/2) of the purchase price allocable to the Equipment or part thereof or Services which gives rise to the claim.

(b) All causes of action against ABB arising out of or relating to this Agreement or the performance or breach hereof shall expire unless brought within one year of the time of accrual thereof.

(c) In no event, regardless of cause, shall ABB be liable for penalties or penalty clauses of any description or for indemnification of Purchaser or others for costs, damages, or expenses arising out of or related to the Equipment and/Services.

**11. Laws and Regulations.** ABB does not assume any responsibility for compliance with federal, state or local laws and regulations, except as expressly set forth herein, and compliance with any laws and regulations relating to the operation or use of the Equipment or Software is the sole responsibility of the Purchaser. All laws and regulations referenced herein shall be those in effect as of the Proposal date. In the event of any subsequent revisions or changes thereto, ABB assumes no responsibility for compliance therewith. If Purchaser desires a modification as a result of any such change or revision, it shall be treated as a change per Article 4. Nothing contained herein shall be construed as imposing responsibility or liability upon ABB for obtaining any permits, licenses or approvals from any agency required in connection with the supply, erection or operation of the Equipment. This Agreement shall be governed by the laws of the State of New York but excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and excluding New York law with respect to conflicts of law. Purchaser agrees that all causes of action against ABB under this Agreement shall be brought in the State Courts of the State of New York, or the U.S. District Court for the Southern District of New York. If any provision hereof, partly or completely, shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision or portion hereof and these terms shall be construed as if such invalid or unenforceable provision or portion thereof had never existed.

**12. OSHA.** ABB warrants that the Equipment will comply with the relevant standards of the Occupational Safety and Health Act of 1970 ("OSHA") and the regulations promulgated thereunder as of the date of the Proposal. Upon prompt written notice from the Purchaser of a breach of this warranty, ABB will replace the affected part or modify it so that it conforms to such standard or regulation. ABB's obligation shall be limited to such replacement or modification. In no event shall ABB be responsible for liability arising out of the violation of any OSHA standards relating to or caused by Purchaser's design, location, operation, or maintenance of the Equipment, its use in association with other equipment of Purchaser, or the alteration of the Equipment by any party other than ABB.

## 13. Software License.

(a) ABB owns all rights in or has the right to sublicense all of the Software, if any, to be delivered to Purchaser under this Agreement. As part of the sale made hereunder Purchaser hereby obtains a limited license to use the Software, subject to the following: (i) The Software may be used only in conjunction with equipment specified by ABB; (ii) The Software shall be kept strictly confidential; (iii) The Software shall not be copied, reverse engineered, or modified; (iv) The Purchaser's right to use the Software shall terminate immediately when the specified equipment is no longer used by the Purchaser or when otherwise terminated, e.g. for breach, hereunder; and (v) the rights to use the Software are non-exclusive and non-transferable, except with ABB's prior written consent.

(b) Nothing in this Agreement shall be deemed to convey to Purchaser any title to or ownership in the Software or the intellectual property contained therein in whole or in part, nor to designate the Software a "work made for hire" under the Copyright Act, nor to confer upon any person who is not a named party to this Agreement any right or remedy under or by reason of this Agreement. In the event of termination of this License, Purchaser shall immediately cease using the Software and, without retaining any copies, notes or excerpts thereof, return to ABB the Software and all copies thereof and shall remove all machine-readable Software from all of Purchaser's storage media.

**14. Inventions and Information.** Unless otherwise agreed in writing by ABB and Purchaser, all right, title and interest in any inventions, developments, improvements or modifications of or for Equipment and Services shall remain with ABB. Any design, manufacturing drawings or other information submitted to the Purchaser remains the exclusive property of ABB. Purchaser shall not, without ABB's prior written consent, copy or disclose such information to a third party. Such information shall be used solely for the operation or maintenance of the Equipment and not for any other purpose, including the duplication thereof in whole or in part.

**15. Force Majeure.** ABB shall neither be liable for loss, damage, detention or delay nor be deemed to be in default for failure to perform when prevented from doing so by causes beyond its reasonable control including but not limited to acts of war (declared or undeclared), Acts of God, fire, strike, labor difficulties, acts or omissions of any governmental authority or of Purchaser, compliance with government regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of delay due to any such cause, the date of delivery will be extended by period equal to the delay plus a reasonable time to resume production, and the price will be adjusted to compensate ABB for such delay.

**16. Cancellation.** Any order may be cancelled by Purchaser only upon prior written notice and payment of termination charges, including but not limited to, all costs identified to the order incurred prior to the effective date of notice of termination and all expenses incurred by ABB attributable to the termination, plus a fixed sum of ten (10) percent of the final total price to compensate for disruption in scheduling, planned production and other indirect costs.

**17. Termination.** No termination by Purchaser for default shall be effective unless, within fifteen (15) days after receipt by ABB of Purchaser's written notice specifying such default, ABB shall have failed to initiate and pursue with due diligence correction of such specified default.

## 18. Export Control.

(a) Purchaser represents and warrants that the Equipment and Services provided hereunder and the "direct product" thereof are intended for civil use only and will not be used, directly or indirectly, for the production of chemical or biological weapons or of precursor chemicals for such weapons, or for any direct or indirect nuclear end use. Purchaser agrees not to disclose, use, export or re-export, directly or indirectly, any information provided by ABB or the "direct product" thereof as defined in the Export Control Regulations of the United States Department of Commerce, except in compliance with such Regulations.

(b) If applicable, ABB shall file for a U.S. export license, but only after appropriate documentation for the license application has been provided by Purchaser. Purchaser shall furnish such documentation within a reasonable time after order acceptance. Any delay in obtaining such license shall suspend performance of this Agreement by ABB. If an export license is not granted or, if once granted, is thereafter revoked or modified by the appropriate authorities, this Agreement may be canceled by ABB without liability for damages of any kind resulting from such cancellation. At ABB's request, Purchaser shall provide to ABB a Letter of Assurance and End-User Statement in a form reasonably satisfactory to ABB.

**19. Assignment.** Any assignment of this Agreement or of any rights or obligations under the Agreement without prior written consent of ABB shall be void.

**20. Nuclear Insurance – Indemnity.** For applications in nuclear projects, the Purchaser and/or its end user customer shall have complete insurance protection against liability and property damage resulting from a nuclear incident to and shall indemnify ABB, its subcontractors, suppliers and vendors against all claims resulting from a nuclear incident.

**21. Resale.** If Purchaser resells any of the Equipment, the sale terms shall limit ABB's liability to the buyer to the same extent that ABB's liability to Purchaser is limited hereunder.

**22. Entire Agreement.** This Agreement constitutes the entire agreement between ABB and Purchaser. There are no agreements, understandings, restrictions, warranties, or representations between ABB and Purchaser other than those set forth herein or herein provided.