

## General Terms and Conditions for Service - Siemens Switzerland Ltd. (Version 12.2012)

The present General Terms and Conditions for Service - Siemens Switzerland Ltd. (GTCS) shall be binding if declared applicable in our tender/order confirmation or our report. Any conditions to the contrary stipulated by the customer shall be valid only if expressly accepted by us in writing.

### A. DEFINITIONS

- A.1 **System:** The hardware and software which are the subject of the Service Contract or the Services Based on Time and Workload. The term "equipment" may be used as a synonym.
- A.2 **Services:** Services Based on Service Contract (Paragraph A.5) along with Services Based on Time and Workload (Paragraph A.3).
- A.3 **Services Based on Time and Workload:** Services which we perform on a time-and-workload basis to maintain, restore or functionally upgrade the operational readiness of a System (Paragraph B).
- A.4 **Service Contract:** Individual section of the contract with the customer-specific details and agreements.
- A.5 **Services Based on Service Contract:** Any services under the Service Contract (Paragraph C).
- A.6 **Service Stand-By Time:** Our accessibility and provision of suitable personnel and material resources for rapid and effective intervention in the event of a fault during the time agreed in the Service Contract.
- A.7 **Normal Working Hours:** Working days from Monday through Friday, from 0800 to 1700 in each case, statutory public holidays as applying at our service location excluded.
- A.8 **On-Call Service:** The extension of our Service Stand-by Time beyond the Normal Working Hours.
- A.9 **Service Call Desk:** Our central point for the acceptance of fault reports and their forwarding to the responsible member of our personnel. The telephone and fax number, plus, where applicable, the internet- or e-mail address of the Service Call Desk are listed in the Service Contract. The term "Helpline" may be used as a synonym.
- A.10 **Response Time:** Period between customer's call being received by the Service Call Desk until our first expert telephone support is provided during the Service Stand-By Time.
- A.11 **Intervention Time:** Period between customer's call being received by the Service Call Desk until our first expert intervention on the System via Remote Access or On-Site Access during the Service Stand-By Time.
- A.12 **Remote Access:** Services for fault diagnosis, troubleshooting or monitoring of the System, performed by our personnel from one of our support centers or a mobile station via telecommunications facilities (internet, telephone or data line).
- A.13 **On-Site Access:** Services performed by our personnel at the location of the System.
- A.14 **Update:** Corrected and / or further developed version of the System's software without functional expansion.
- A.15 **Upgrade:** Corrected and / or further developed version of the System's software or hardware with functional expansion.
- A.15 **Force Majeure:** Impediments we are unable to overcome in spite of taking the required care, whether affecting ourselves, the customer or any third party. Such impediments shall include government measures or omissions, riots, mobilization, war; labour conflicts, lock-outs, strikes, accidents and other material equipment interruptions, epidemics, or natural occurrences; terrorist activities.

### B. SERVICES BASED ON TIME AND WORKLOAD

#### 1. Subject Matter

- 1.1 We shall provide – in the absence of a Service Contract – Services Based on Time and Workload during Normal Working Hours in accordance with the individual agreement between us and the customer. If possible for us, we shall provide Services Based on Time and Workload outside Normal Working Hours as well; in this case, overtime and on-call surcharges shall be invoiced.

### 2. Costs and Payment Terms

- 2.1 We shall invoice the provided services on a time-and-workload basis and any surcharges according to the rates in our price list that is applicable at the time of service provision.
- 2.2 Our invoices shall be due without cash discounts and without any other deductions within 30 days of the invoice date. The offsetting of such claims against counterclaims shall not be allowed.
- 2.3 Should the customer fail to meet the agreed payment dates, he shall be in default without a payment reminder being issued and shall pay a default interest of eight percent p.a. starting on the 31<sup>st</sup> day after the invoice date.

### C. SERVICES BASED ON SERVICE CONTRACT

If the customer has concluded a Service Contract (Paragraph A.4) with us, the provisions of this Paragraph C shall apply additionally:

#### 3. Subject Matter

- 3.1 We shall be available to provide the Services Based on Service Contract during the Service Stand-By Time agreed in the Service Contract.
- 3.2 The customer shall submit fault reports to the Service Call Desk. Outside Normal Working Hours, faults shall be reported by phone.
- 3.3 We shall consult with the customer by phone within the Response Time agreed upon in the Service Contract, classify the received fault report and commence fault rectification within the Intervention Time agreed upon in the Service Contract.
- 3.4 In case we fail to meet jointly agreed-upon times and deadlines by reason of our own fault, the customer shall be entitled to a credit note to be agreed upon in the Service Contract. The total of all credit notes shall be limited to a maximum of ten percent of the annual flat-rate service fee. Additional claims on the part of the customer based on default, especially claims for damages, are excluded.
- 3.5 Defective system parts shall, at our discretion, be repaired or replaced.
- 3.6 We shall be entitled to invoice the customer separately for costs associated with fault location, if reported faults can neither be identified nor reproduced, or are attributable to causes outside the System.

#### 4. Additional Services Requested by the Customer

- 4.1 Services requested by the customer which go beyond the scope agreed upon in the Service Contract must be agreed upon in writing in advance. The provisions in Paragraph B. shall apply additionally to such services.

#### 5. Duties and Obligations of the Customer

- 5.1 The customer shall have all work on the System carried out exclusively by us or by third parties authorised by us in advance.
- 5.2 The customer shall observe the pertinent operating instructions and, in particular, comply with the environmental values approved for the System.
- 5.3 If we are unable to provide the Services Based on Service Contract at the customer's premises in a timely or proper manner for reasons for which he is responsible, we shall be entitled to charge him for the resultant costs.

#### 6. Service Fees, Indexing, Payment Conditions

- 6.1 The flat-rate service fee shall be calculated from the agreed services in accordance with the Service Contract.
- 6.2 Flat-rate service fees do not cover services which are invoiced on a time-and-workload basis, which are provided additionally at the customer's request (Paragraph C.4) or which are provided to rectify a defect outside the system.
- 6.3 We shall be entitled to adjust flat-rate service fees if the wage index of Swissmem (formerly "ASM, Association of Swiss

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Engineering Employers") changes or if changes occur in the scope of services.

- 6.4 Our invoices shall be due without cash discounts and without any other deductions within 30 days of the invoice date. The offsetting of such claims against counterclaims shall not be allowed.
- 6.5 Should the customer fail to meet the agreed payment dates, he shall be in default without a payment reminder being issued and he shall be liable to pay default interest at a rate of eight percent p.a. Should the customer be more than three months in default, we shall be entitled to suspend performance of the Services. We expressly reserve the right of termination with immediate effect of the Service Contract.

### 7. Term of Service Contract, Notice of Termination

- 7.1 The Service Contract (incl. this GTCS) shall come into force upon its legally valid signature by both contractual parties as at the date agreed in the Service Contract. We shall in all cases sign collectively in pairs.
- 7.2 The Service Contract shall be concluded for the agreed-upon minimum period and thereafter – if a maximum period is not provided in the Service Contract – for an indefinite period.
- 7.3 Each contractual party shall be entitled to give written notice of termination of the Service Contract (incl. this GTCS), subject to a notice period of three months from the end a calendar year, but effective at the earliest from the end of the agreed minimum term, unless otherwise agreed in the Service Contract.
- 7.4 Each contractual party shall be entitled to give written notice of termination of the Service Contract (incl. this GTCS) with immediate effect for good cause, which shall apply in particular: (a) in the event of culpable material breach of contract by the other contractual party which is not fully rectified within a reasonable period despite written warnings; or (b) if the other contractual party has a long-term inability to pay or if insolvency or probate proceedings are applied for or initiated against the other party or dismissed due to insufficient assets.
- 7.5 We shall be entitled to give written notice of termination of the Service Contract (incl. this GTCS) with immediate effect if the System suffers serious damage or is rendered unusable as a result of improper treatment on the part of the customer or third parties or as a consequence of Force Majeure. The customer shall inform us of such an event without delay. In this case remuneration shall be calculated pro rata temporis. We reserve the right to institute claims for damages.
- 7.6 After termination of the Service Contract (incl. this GTCS), the customer shall be entitled to continue to use the last version of the software installed by us, in accordance with the pertinent usage conditions.

## D. GENERAL PROVISIONS FOR SERVICES

### 8. General Information

- 8.1 Services shall be provided, at our discretion, via Remote Access, On-Site Access or at our premises.
- 8.2 We shall be entitled to engage subcontractors and shall be liable for their services like our own.
- 8.3 Spare parts shall be invoiced according to the relevant list prices. They may be new or as good as new. If defective parts are replaced, we shall acquire ownership thereof. The spare parts shall become the customer's property as soon as they are fully paid for.
- 8.4 Hardware deliveries shall take place EXW, Zurich (Incoterms 2010).
- 8.5 Software and documentation shall be supplied on a suitable data carrier of our choice.
- 8.6 The customer shall be obliged to provide us with the information and documentation necessary for the Services before commencement of their performance.
- 8.7 The customer shall be responsible for the regular backup of his data himself.
- 8.8 The customer shall obtain for us the System access required for performance of the Services, and shall make available the

necessary transmission devices, network connections and workstations.

- 8.9 The customer shall make a properly qualified contact person available to us during the performance of our Services and inform us, without being requested to do so, of the safety regulations applicable at that person's premises.
- 8.10 The customer recognizes our exclusive right of disposal in respect of such of our tools as are located at the site.

### 9. Confidentiality and Data Protection

- 9.1 We undertake to treat confidentially at all times, even after the performance of the Services, as our own trade secrets, all documents and information received from the customer in relation to the Services, including all copies or recordings that may have been made thereof, as well as the object and purport of the tasks we have been entrusted with, and such documents and information as we shall elaborate or develop. We therefore shall not divulge without cause such documents or information within our business enterprise and shall not disclose them to any third parties – neither in full nor in part – except to subcontractors and then subject to paragraph D. 9.3 only. The obligation shall not apply for such documents and information of which it is demonstrated that (a) they have become a matter of common knowledge without the obligation to observe confidentiality having been infringed, or (b) they have been lawfully disclosed by third parties, without the obligation to observe confidentiality having been infringed, (c) they have been elaborated by us independently.
- 9.2 Insofar as we process personal data when performing work in relation with the equipment or documentation, we shall comply with customer's instructions and current Data Protection Acts; further, we shall take such measures as are necessary with a view to safeguarding such data against unauthorized access by third parties.
- 9.3 Insofar as this should prove necessary, we shall be entitled to pass documents and information on to subcontractors, provided the latter, on their part, have previously agreed in writing to observe confidentiality within the meaning of this paragraph.
- 9.4 In accordance with the above provisions the customer undertakes to treat confidentially and not to disclose to any third party, all documents received from us and bearing the mention "vertraulich", "confidential", "Fabrikationsgeheimnis" or "manufacturing secret", etc.

### 10. Rights to Hardware and Software and Documentation

- 10.1 Intellectual or industrial property rights, irrespective of whether such rights are eligible for legal protection or not, of all the hardware and software, including associated changes, as well documentation, shall remain with us, or with our subcontractors or third party suppliers, as the case may be.
- 10.2 The customer shall enjoy the right to use the supplied hardware and software and the documentation provided in accordance with these GTCS and any Service Contract, along with any license conditions also supplied. Standard software and its documentation shall be exclusively subject to the pertinent conditions of supply and licensing of the respective suppliers.
- 10.3 Unless otherwise expressly agreed, the customer shall not be entitled to: (a) reproduce or have reproduced the hardware or parts thereof, (b) duplicate the software (except for backup purposes) or make it available to third parties, (c) copy or publish the associated documentation, or have it copied or published.
- 10.4 Upon transfer of the System, these obligations and rights shall be assigned to the recipient.

### 11. Warranty

- 11.1 We do not warrant that the System maintained by us may be used in a fault-free manner and without interruption in all configurations desired by the customer.

- 11.2 We provide a warranty for a period of six months from the date of delivery for a spare part or an Upgrade; in the case of an Upgrade, the warranty shall apply exclusively to the functional extension of the System affected by the Upgrade.
- 11.3 In the case of the provision of a Service or the supply of an Updates, we provide a warranty for a period of three months after completion of the Service or after delivery of the Update in respect of proper and careful execution.
- 11.4 In any case the warranty period shall end 9 months at the latest after beginning of the ordinary warranty period stipulated under Art. 11.2 respectively 6 months at the latest after beginning of the ordinary warranty period stipulated under Art. 11.3.
- 11.5 We provide no warranty for wear and tear parts.
- 11.6 Should the customer discover a fault or deficiency during the warranty period, it shall report this to the Service Call Desk without delay. We shall rectify the fault / deficiency by means of our choice within a reasonable period of time. Paragraph D. 8.3 shall apply analogously.
- 11.7 The terms "fault" / "deficiency" shall be taken to mean
- in the case of the supply of hardware or software, non-conformances from the properties agreed in the respective specification, and
  - in the case of Services, execution in an improper manner, or without due care and attention.
- 11.8 If we are unable to repair a fault/defect within a reasonable grace period, the customer shall be entitled to waive repair and to request a reasonable reduction of the costs in the case of Services Based on Time and Workload or of the service fee in the case of the Service Contract. The reasonable reduction shall amount, at most, to the costs paid by the customer for our Services Based on Time and Workload in question or, at most, to the annual flat-rate service fee of the Services Based on Service Contract for which we were unable to provide warranty.
- 11.9 The warranty shall exclude all deficiencies and damage not demonstrably occurring as a result of faulty material or construction, or imperfection in the execution, such as depreciation due to ordinary wear and tear, or interference with equipment not supplied by us, or of inexpert intervention and modifications on the part of the customer or third parties not authorized by us.
- 11.10 The customer shall have no rights and claims as a result of faults/defects except for those set out explicitly in Paragraph D.11.

### 12. Intellectual Property Rights and Third Party Claims

- 12.1 We shall, to the extent that it is possible and reasonable that we recognize such a situation, make sure that the hardware and software supplied does not encroach upon the rights of third parties.

If a third party should raise a legitimate claim arising from intellectual property rights (patents, etc.) or with respect to intellectual property rights relating to the delivery of hardware and software, we shall – at our discretion and expense – to exclusion of any further claims, either

- obtain, from the person entitled to dispose of the intellectual property right concerned, the right to use this intellectual property right, or
- modify the parts that infringe intellectual property rights, or
- replace the parts that infringe intellectual property rights by parts that are not infringing, or
- take back the parts against restitution of the price paid by the customer.

We shall be entitled to require appropriate restitution from the customer for use of the software.

A claim is considered to be a legitimate claim only if it has either been acknowledged by us, or if it has been awarded by a judicial decision not subject to appeal.

- 12.2 The customer shall inform us immediately of any claim being raised against us on any legal ground by a third party. The customer shall not acknowledge any such claims. He shall

assist us in warding off such claims and support us in the conflict with the third party, in particular in a lawsuit, and he shall act in compliance with our written instructions. We shall refund to the customer all related expenses incurred by him to the extent they are evidenced.

### 13. Liability

- 13.1 We shall be liable without limitation for personal damages for which we are responsible in accordance with the statutory provisions, and shall pay compensation for direct damage to tangible property for which we are responsible, up to an amount of CHF 1,000,000 (one million) per event, up to a maximum of CHF 2,000,000 (two million) per calendar year.
- 13.2 In the event of loss of or damage to data and/or data storage media, we are not liable for cost relating to the restoration of lost or damaged data.
- 13.3 We shall not be liable if we are prevented, on grounds for which we are not responsible, from performing the Services in a timely or proper manner.
- 13.4 Claims on the customer's part extending beyond those expressly cited in these GTCS, in particular those stemming from warranty, delay, non-fulfilment and claims for damages – whatever their legal basis – and any liability for pecuniary damage, loss of profit, loss of use, production stoppages, operational interruption or the rights of third parties, and for all indirect or consequential damage shall be excluded, unless mandatory liability shall exist by virtue of unlawful intent or gross negligence.

### 14. Disclosure of the Business Relationship and of Data and Information

- 14.1 The customer agrees that all data and information required for the business relationships or resulting from said relationships, especially contractual documents and papers as well as data and information necessary for the performance of the Services of and about the customer and their auxiliary persons (Hilfspersonen) may also be stored outside Switzerland. Furthermore, all this data and information may be disclosed to Siemens AG as well as to their associated companies for corresponding processing, especially for providing services, fulfilment of legal requirements or for Siemens-internal audit and/or supervisory requirements; this always in compliance with respectively applicable data protection laws.

### 15. Concluding Provisions

- 15.1 Any amendments and supplements to these GTCS and to any Service Contract must be made in writing to be valid. This requirement may be waived only in writing.
- 15.2 We shall be entitled to assign these GTCS and any Service Contract or any rights and duties thereunder to a company within our group of companies.
- 15.3 Should individual provisions of these GTCS or and Service Contract be or become ineffective in part or in whole, or should it prove impossible to implement them in the intended manner for legal reasons, this shall not affect the validity of the remaining contract provisions. The parties shall replace the ineffective provision with an effective provision that approximates the economic intention of the ineffective provision as closely as is legally possible.

### 16. Applicable Law and Arbitral Tribunal

- 16.1 These GTCS and any Service Contract are governed by Swiss substantive law. The application of the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Law on the International Sale of Goods) of April 11, 1980, shall be excluded.
- 16.2 Any dispute, controversy or claim arising out of or in relation to this contract, including the validity, invalidity, breach or termination thereof, shall be settled by arbitration in accordance with the Swiss Rules of International Arbitration

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of the Swiss Chambers of Commerce in force on the date when the notice of arbitration is submitted in accordance with these Rules. The number of arbitrators shall be three. The seat of the arbitration shall be in Zurich, Switzerland. The arbitral proceedings shall be conducted in English.