Conditions for Supply of Training Services by Siemens

1. Definitions
In these Conditions, unless otherwise indicated by the context: Booking Form means the booking form for the Services (in the form prescribed by Siemens) to be completed and submitted to Siemens by the Customer. Business Day means Monday to Friday (inclusive) excluding public holidays in the state or territory in which the Services are being provided. Contract means the agreement between the Parties consisting of Siemens’ Offer, these Conditions, the Booking Form and the Customer’s purchase order. Conditions means these conditions for the supply of training services which form part of the Offer in which they are referred to or to which they are attached. Confidential Information means all information (in any form) of or about Siemens which:
(a) is by its nature confidential; (b) is designated to be confidential; or (c) the Customer knows or ought reasonably to know is confidential. Contract Price means the amount payable by the Customer to Siemens for the Services as specified in the Contract as may be varied in accordance with the Contract. Customer means the company, firm or persons for whom work under the Contract is performed and shall include executors, administrators, successors and permitted assigns. GST has the meaning given to it in the A New Tax System (Goods and Services Tax) Act 1999 (as amended). Intellectual Property Rights means all intellectual property and industrial rights of any description including without limitation all rights conferred by statute, common law or equity (whether or not registered) in relation to inventions (including patents), trademarks, designs, copyright, circuit layout rights, trade secrets, know-how and confidential information and all other rights of a proprietary nature created as a result of intellectual activity in the industrial, scientific, literary and artistic fields. Offer means the offer by Siemens to provide the Services to the Customer which includes any special conditions contained in it. Parties means Siemens and the Customer and Party means either one of them. Personnel of a Party means that Party’s officers, employees, contractors and agents. Services means the training services to be provided by Siemens under the Contract and includes all Variations to those services. Siemens means Siemens Ltd., ABN 98 004 347 880 or its related body corporate (as that term is defined in section 50 of the Corporations Act 2001) that submits the Offer, and its successors and assigns. Taxes means all taxes including without limitation sales taxes, excise duties, stamp duties, customs duties, GST and other government charges, impost and levies. Variation means any change (including an increase, decrease or omission) to the Services or any change to the character or quality of the Services.

2. Validity of Offer, Precedence, Additional Information & Separa ble Portions
2.1 Unless previously revoked by written notification to the Customer, the Offer shall remain valid for the period stated in the Offer or where no such period is stated for 30 days from the date of the Offer. 2.2 If there is any inconsistency or variance between these Conditions and the Offer, then the Offer shall prevail. 2.3 The Customer may only accept Siemens’ Offer by completing and returning a Booking Form for each training participant and a Customer purchase order to Siemens. The completion and return of the Booking Form and Customer purchase order constitutes acceptance by the Customer of the Services set out in Siemens’ Offer and identified in the Booking Form and purchase order, subject to these Conditions. 2.4 No Customer provision (whether contained in a purchase order or otherwise) that is inconsistent with or purports to vary or reject the terms of Siemens’ Offer (including these Conditions) is accepted by Siemens unless agreed by Siemens in writing. 2.5 These Conditions shall apply to any separable portions of the Services.

3. Provision of Services and Payment of Contract Price
3.1 Siemens shall supply the Services in accordance with the Contract. 3.2 In consideration of Siemens supplying the Services, the Customer shall pay Siemens the Contract Price. 3.3 Unless otherwise agreed between the Parties in writing (and subject always to clause 10.2) the Contract Price shall be paid by the Customer to Siemens at or not later than 30 days from the date of Siemens’ invoice. The provision of and any extension of credit facilities shall be at the discretion of Siemens and is subject to prior approval by Siemens. Siemens may withdraw credit facilities at any time prior to completion of the Services without notice.

4. Working Hours
Unless otherwise agreed in writing between the Parties, Siemens shall provide the Services during Siemens’ normal working hours. Normal working hours shall be governed by the relevant Award in force from time to time for the particular location where Siemens’ Personnel are engaged. All Services provided outside of normal working hours shall be regarded as additional services for the purposes of clause 3.5.

5. Variations
5.1 Either Party may request a Variation to the Services prior to the commencement of those Services. Siemens may agree to perform a Variation requested by the Customer, where such Variation is reasonable and within the scope of work contemplated by the Contract. 5.2 The Contract Price specified by Siemens in its Offer is based upon the scope of work specified in its Offer. If the Customer requests a Variation, Siemens may adjust the Contract Price by a reasonable amount to take into account extra costs incurred by Siemens in connection with the Variation.

6. Confidentiality and Intellectual Property
6.1 All Confidential Information which the Customer has access to must be maintained in strict secrecy and confidence by the Customer. The Customer may only use the Confidential Information for the purposes of the Contract and except to the extent required by law, the Customer shall not disclose that Confidential Information to any third party without the prior written consent of Siemens. 6.2 Ownership of all Intellectual Property Rights developed or created by Siemens in connection with the Services (including without limitation all training materials, sketches, designs, reports, plans, drawings, specifications, samples, models, patterns, photographs, graphics, logos, artworks, documents or records) shall at all times remain vested in Siemens or shall become vested in Siemens upon creation. The Customer shall promptly execute, at the request of Siemens, all documents and do all such other acts as may be necessary to give effect to this clause.

7. Obligations of Customer to enable Performance of Contract
7.1 If the Services (or any of them) are to be provided at the Customer’s premises: (a) the Customer shall promptly answer all queries and provide Siemens all information and documents that Siemens deems necessary to enable Siemens to provide the Services. The Customer shall ensure that all information provided to Siemens for the purposes of the Contract is accurate and complete (b) the Customer shall provide any approvals, licences or permits that are necessary to enable Siemens to supply the Services; and
11. Dispute Resolution
11.2 Upon the giving of a Notice of Dispute, the following shall apply:
(a) the Dispute shall be submitted for negotiation by the respective Chief Executive Officers of the Parties or their respective nominees
(b) If within 21 days of the giving of the Notice of Dispute, the Dispute has not been resolved, the Dispute may be referred by either Party to arbitration in accordance with the Rules for the conduct of commercial arbitrations of the Institute of Arbitrators & Mediators Australia by one arbitrator who shall be a lawyer and who shall give his or her decision in writing and based on legal substance chosen by the Parties or, if they cannot agree within 42 days of the giving of the Notice of Dispute, by the Chairman for the time being of the Institute of Arbitrators & Mediators Australia.
(c) the award of such arbitration shall be final and binding on both Parties in accordance with legislation applying to Commercial Arbitration and judgement thereon may be entered in any court having jurisdiction
(d) a reference to arbitration under this clause shall not relieve either Party of any other obligations under the Contract, including, if and so far as is reasonably practicable, the obligation to take steps necessary during any arbitration proceedings to ensure that the progress of the Contract will be maintained.
(e) the seat of Arbitration shall be Melbourne, Victoria. The language to be used in the arbitration shall be English.

12. Non-Solicitation
12.1 The Customer shall not during the term of the Contract and for a period of 12 months after the provision of all of the Services under the Contract, directly or indirectly solicit or entice away (or attempt to solicit or entice away) for employment any person who is engaged by Siemens to perform the Services.

13. General
13.1 Waiver - A failure or delay in exercising any right, power or remedy by a Party does not operate as a waiver. A single or partial exercise of a waiver does not prevent any other or a further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting the waiver unless made in writing.
13.2 Governing Law – The Contract shall be governed by and construed in accordance with the laws of the State of Victoria and the Parties irrevocably submit to the non-exclusive jurisdiction of the courts of that State and to the application of such courts.
13.3 Survival – All provisions of the Contract which are capable of having effect after the termination or expiry of the Contract shall remain in full force and effect despite any termination or expiry of the Contract.

14. Notices
14.1 (a) All notices given by a Party pursuant to the Contract must be in writing and must be delivered by prepaid post, by hand or by facsimile to the last known address of the other Party.
(b) A notice shall be deemed to be duly given:
(i) in the case of delivery by hand, when delivered;
(ii) in the case of delivery by post, 2 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country); or
(iii) in the case of facsimile, on receipt by the sender of a transmission report from the despatching machine showing the transmission has been made to the correct fax machine number without error.
(c) If a notice is deemed to be given under clause 13.4 on a day which is not a Business Day in the place which the notice is received, or is deemed to be received after 4.00 pm in that place, the notice will be deemed to be given on the next Business Day in that place.
14.2 Severance - If any provision of the Contract is held to be invalid or unenforceable by a court of law or other competent authority, that provision shall be severed and all other provisions of the Contract shall continue in full force and effect.
14.3 Amendment - No amendment or variation of the Contract shall be valid or binding unless made in writing and signed by both Parties.
14.4 Business Day – If a payment or other act is required to be made or done under the Contract on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.
14.5 Entire Agreement – The Contract contains the entire agreement between the Parties on its subject matter. The Parties agree that all other understandings, agreements, documents, representations and communications whether express or implied in any way relating to the Contract are void and have no effect.

13.8 Interpretation - In these Conditions:
(a) a reference to the Contract or any other document includes any variation or replacement of either of them;
(b) the use of the word "includes" shall be interpreted to mean "includes without limitation;"
(c) headings are for ease of reference and do not affect interpretation;
(d) the singular includes the plural and vice versa;
(e) a reference to "$" or "dollars" is a reference to Australian dollars;
(f) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase shall have corresponding meanings; and
(g) a reference to all or any part of a law, statute, rule, regulation or ordinance includes that statute, rule, regulation or ordinance as amended, consolidated, re-enacted or replaced from time to time.