General Terms and Conditions for Services in the Building Technology / Siemens Switzerland Ltd (Version 01.2020)

1. Scope

1.1 These General Terms and Conditions govern the contractual relationship between the Customer and Siemens Schweiz AG ("SIEMENS"), and are binding for all maintenance/services in the building technology provided by SIEMENS on customer-specific security and building automation systems ("Systems") and their components (hardware, software and/or any other elements) to check and optimize the energy efficiency of the systems. They shall also apply in the event that the customer indirectly accesses its own systems via the SIEMENS systems.

1.2 Services shall be provided by SIEMENS either on a time and material basis or pursuant to a Maintenance/Service Provision Contract ("Contract").

1.3 The Contract or the services based on a time and material basis shall be performed exclusively with reference to and pursuant to these General Terms and Conditions for Services in the Building Technology ("GTC - MS"). Any other conditions or special arrangements shall only apply if they are expressly accepted by SIEMENS in writing.

2. Services (content and scope)

2.1. The maintenance/services to be provided by SIEMENS, their cycles and frequencies will be provided in accordance with the type, age and size of the System and taking account of the Customer's specific needs ("Contractual Services") or as agreed on an individual basis with the Customer ("Services Based on Time and Material" and together with the Contractual Services hereinafter referred to as "Services").

2.2. SIEMENS shall perform the Services in the manner and at the place of performance to be agreed in the Contract. The Services shall, if agreed, be performed in writing.

2.3. It is the assumption of SIEMENS that the customer maintains an IT security scheme with state of the art, and shall ensure that the appropriate security measures (e.g. system security updates and anti-virus programs) are included in the System at all times.

2.4. Where remote access to the Customer’s systems is required in order to provide services the Customer shall set this up at its own expense and at its own risk. It shall issue the necessary authorisations and shall at its own expense inform SIEMENS and its employees of its IT procedures.

2.5. The remote access shall be effected as part of the Siemens security concept that currently applies in each case. Siemens shall be authorized to adapt said security concept at any time without prior notice to the extent that it does not jeopardize the implementation of remote access. If the remote access cannot be implemented or continued as part of this security concept, Siemens' obligation to provide the service shall lapse for the duration of the interruption without any compensation being payable.

2.6. If the Contract is only entered into after the warranty period agreed in the system supply contract, the Contractual Services shall only be performed following an initial inspection, for which a charge shall be made. Any necessary repairs that come to light during the initial inspection shall be performed by SIEMENS and charged separately.

2.7. The precise content and scope of the individual Services Based on Time and Material shall be individually agreed with the Customer.

2.8. As proof of the Services performed, SIEMENS employees shall issue a job report for every activity carried out in connection with the performance of a Service.

3. Place of performance and performance of the Services

3.1. The Services shall be performed by accessing the System at its installation site in Switzerland and Liechtenstein, at SIEMENS’ business premises or by remote access. SIEMENS, as the supplier, sees its place of business as the place of delivery. Unless otherwise stated in the Contract, the hardware shall be supplied DDP (Delivery Duty Paid), place of installation, in accordance with Incoterms 2020. If remote access is interrupted due to circumstances for which SIEMENS is not responsible, and performance of the service is impossible, SIEMENS’ service obligation shall lapse for the duration of the interruption.

3.2. Unless otherwise agreed in the Contract, SIEMENS shall perform the Services during the System’s regular working hours.

3.3. SIEMENS shall be entitled to change and/or exchange the components of the System supplied under the Contract if the new components have equivalent or better functionality than the exchanged components and only to the extent that they are compatible with the System maintained by it. SIEMENS shall make the necessary changes to technical and other documentation.

3.4. SIEMENS shall supply documentation and software on a suitable data carrier of its choice.

3.5. When accessing the System remotely or at the System’s installation site, SIEMENS shall observe any safety regulations and act according to the System’s conditions and specifications. SIEMENS shall make the necessary changes to technical and other documentation.

3.6. SIEMENS shall supply documentation and software on a suitable data carrier of its choice.

3.7. SIEMENS shall at the request of the Customer provide, within thirty days after access, the names of the employees who have specifically performed remote service.

4. Deadlines

SIEMENS shall agree all deadlines, particularly deadlines by which preventative maintenance is to take place, with the Customer in advance. If SIEMENS is unable to meet an agreed deadline for reasons beyond its control and/or if obstacles or events arise which cannot be averted despite the application of due care by SIEMENS (e.g. accidents, significant operational disruptions, labour disputes, natural events etc.), SIEMENS shall inform the Customer immediately about the extent and background of the delay. The Parties shall agree another date or a further course of action. Unless otherwise expressly agreed in writing, all liability on the part of SIEMENS resulting from and in connection with delayed deadlines shall be excluded. This exclusion shall not apply to loss or damage resulting from the delay caused by negligent or intentional actions on the part of SIEMENS.

5. Requirements for the provision of services, duties and obligations of the Customer (provision of information, equipment etc.)

5.1. Subject to the access rules concerned, the Customer shall grant SIEMENS, its auxiliary personnel and subcontractors prompt and unimpeded access to the System and its components. In the event that a competent contact person is available for SIEMENS during deployments.

5.2. When the Customer requests a Service, it shall describe the original situation to SIEMENS before the deployment and shall make available to SIEMENS any information and documentation it has at its disposal which may be required for the provision of the Service, especially for fault and error rectification.

5.3. The Customer shall promptly provide SIEMENS with the auxiliary equipment required under health and safety laws (SUVA [Federal Accident Insurance Institution]) and/or EU regulations (e.g. scaffolding, lifting gear, signage, barriers etc.) and shall provide the necessary transmission equipment, network connections and workspaces. Furthermore, all installation and operating documentation (e.g. Voltage and Current Values) are to be carried out by the Customer. The Customer shall be obliged to take all necessary measures at the place of performance to protect the health and ensure the safety of SIEMENS engineers and other authorized personnel.

5.4. For the duration of the period in which SIEMENS is obliged to perform the Contractual Services, the Customer may only have work performed on the System by SIEMENS or third parties authorized by SIEMENS.

5.5. The Customer shall be obliged to follow the relevant operating and use instructions and in particular to adhere to the general technical conditions and environmental values (i.e. room temperature, etc.) approved by SIEMENS. If these general conditions cannot be observed for whatever reason, the Customer shall inform SIEMENS immediately.

5.6. The Customer shall be obliged to notify SIEMENS of any disruptions, shutdowns or disassembly of the system in good time. The same applies to structural changes which could make it harder or impossible for SIEMENS to perform the Contractual Services. If the Customer fails to report such an event to SIEMENS in good time, the Customer undertakes to temporarily shut down the whole System or parts of the System after prior consultation with SIEMENS.

5.7. Where the fire detection or sprinkler systems are shut down (completely or partially) the customer must initiate the compensation measures required by VFK [Association of Cantonal Fire Insurance Companies]. In case of interruptions exceeding 24 hours, the Customer must inform the fire authorities.

5.8. The Customer shall be responsible for making proper data backups. The Customer shall be obliged to provide SIEMENS with a current backup of the entire System at any time. If the Customer has agreed data backup with SIEMENS as an option to the Contract, the Service and the flat rate payment for the performance of such a service will be defined in the Contract and the associated description of services.

5.9. If SIEMENS is unable to perform a Contractual Service on time or properly for reasons for which the Customer is responsible (e.g. as a result of incorrect, incomplete or delayed provision of services or materials), SIEMENS shall be entitled to charge all the costs arising or to halt all work.

5.10. If SIEMENS is unable to perform a Contractual Service on time or properly for reasons for which the Customer is responsible (e.g. as a result of incorrect, incomplete or delayed provision of services or materials), SIEMENS shall be entitled to charge all the costs arising or to halt all work.

5.11. SIEMENS shall be entitled to charge the Customer separately for the costs arising from fault location if the fault reports notified by the Customer cannot be identified or reproduced during the fault location process or are caused by factors outside the System maintained by SIEMENS.

5.12. SIEMENS shall not pay any costs associated with any security and monitoring measures put in place by the Customer on the System maintained by SIEMENS pursuant to the Contract.

6. Payment, terms of payment, indexing

6.1. The Customer shall pay SIEMENS a flat-rate payment for the performance of the Contractual Services ("Flat Rate"). This rate is subject to VAT. The Flat Rate is payable annually in advance at the beginning of the calendar year.

6.2. Any changes to or modifications of the scope of the System defined in the Contract shall be made at SIEMENS’ cost. SIEMENS shall perform the work in operation for more than ten (10) years shall entitle SIEMENS to adjust the Flat Rate. In such cases, any increase in the Flat Rate shall be notified to the Customer by issuing a new annual invoice. If the notified increase amounts to more than 20% of the originally agreed Flat Rate, the Customer shall have the option to change the scope of work and to notify the agreed amounts of the Flat Rate at its applicable rates.

6.3. Services Based on Time and Material shall be invoiced based on the current price list of SIEMENS ("Time and Material Cost").
6.4 Unless otherwise agreed, all invoices shall be payable without cash discounts and without any other deduction within 30 days of receipt of the invoice. The setting-off of such claims against counter-claims shall not be admissible. If the Contractor fails to meet the agreed payment deadlines, it shall be in default without further reminder.

6.5 If the Customer defaults on payment of the outstanding amount, SIEMENS shall be entitled to cease performing the Contractual Services. In the event of continued default, SIEMENS reserves the right to terminate the Contract for good cause. Clause 11.2 of the GTC-MS shall apply.

6.6 The Flat Rate and hourly rates shall be amended annually in line with inflation and shall track the Swisswiss wage index.

8. Liability

8.1 SIEMENS shall accept unlimited liability for personal injury caused by it within the scope of the Contractual Services in accordance with the statutory provisions, and in the event of direct damage to property caused in connection with the services rendered by SIEMENS is responsible. SIEMENS shall pay the cost of repair of the property up to an amount of CHF 300,000 per event but not exceeding a total of CHF 1,000,000 (one million) per calendar year.

8.2 In the event of loss of or damage to data and/or data storage media, SIEMENS’s liability for costs shall be limited to the recovery of backed up data.

8.3 The Customer uses the remote access to make changes to its own systems, the customer shall bear sole responsibility for such changes and for compliance with the provisions of law applicable in connection therewith.

8.4 Claims on the Customer’s part extending beyond those expressly cited in these GTC-MS, in particular those arising from warranty, delay, improper performance 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 claims of third parties, and for all indirect or consequential damage and any incurred expenses shall not be a basis of a claim.

9. Secrecy

9.1 Insofar as SIEMENS is given access to confidential data belonging to the Customer during the performance of Services,. SIEMENS shall comply with the data protection laws and treat such data confidentially in the same manner as it would its own data. This includes but is not limited to: a) not disclose the data to third parties in the course of performing the maintenance services for purposes of remote service, b) where the Customer’s data are stored by SIEMENS, the Service Agreement or the Services Based on Time and Material (including these GTC pertaining thereto) shall be in written form in original or copy kept by the Customer, c) to have been produced independently by the Customer or that it is compatible with systems not delivered by SIEMENS, and d) to have been previously disclosed or published by the Customer at a public event or otherwise made available to the public,

9.2 The Customer undertakes to treat all documents received from SIEMENS bearing the mention “vertraulich”, “confidential”, “Fabrikationsgeheimnis”, “manufacturing secret”, “Betriebsgeheimnis” or “trade secret” etc. confidentially as it would its own trade secrets.

9.3 The Customer acknowledges that the information and documents concerning it would its own trade secrets and not to disclose them to any third party except with the Customer’s written consent. The Customer undertakes to treat all documents received from SIEMENS bearing the mention “vertraulich”, “confidential”, “Fabrikationsgeheimnis”, “manufacturing secret”, “Betriebsgeheimnis” or “trade secret” etc. confidentially as it would its own trade secrets and not to disclose them to any third party.

9.4 The Customer shall have the non-exclusive, non-transferable right to use the software provided to it in accordance with the license terms of the System Contract or any diverging license terms for upgraded. Deviations from this software usage rule must be agreed separately in writing.

10.2. SIEMENS shall, to the extent that it is able to recognize such a situation, take all reasonable and feasible steps to ensure that the Services performed do not infringe the property rights of third parties. Should a third party lodge justified claims against the Customer arising from protected rights (patents, copyrights etc.) in connection with or on account of the supply of hardware and software such that the use thereof is imperilled or prevented, SIEMENS shall, at its expense, provide the Customer with recourse to further claims, to either: a) modify or replace the hardware and software so that it does not infringe the third-party right but essentially continues to meet the agreed specifications; or b) exempt the Customer from license fees for the use of the software in respect of third parties; or c) take back the hardware supplied along with all associated software and refund the purchase price. SIEMENS shall be entitled to require appropriate restitution from the Customer for the use of the hardware and software. The Customer shall be obliged to inform SIEMENS immediately and is required to support SIEMENS in the defence of such claims. It is not permitted to recognize claims by third parties itself. Subject to these conditions, SIEMENS shall pay all the expenses incurred by the Customer.

10.3 SIEMENS may only use information to which it becomes privy in the course of performing the maintenance services for purposes of remote service, and, only in anonymised form, in order to undertake further development of its products. SIEMENS shall ensure that no information or data are disclosed or made accessible to third parties.

10.4 SIEMENS shall, however, also be entitled to take legal action and seek compensation for damages incurred by any misappropriation, including misuse, of the information and documents received from the Customer for the services SIEMENS provides to the Customer. Should a third party lodge justified claims against the Customer arising from protected rights (patents, copyrights etc.) in connection with or on account of the supply of hardware and software such that the use thereof is imperilled or prevented, SIEMENS shall, at its expense, provide the Customer with recourse to further claims, to either: a) modify or replace the hardware and software so that it does not infringe the third-party right but essentially continues to meet the agreed specifications; or b) exempt the Customer from license fees for the use of the software in respect of third parties; or c) take back the hardware supplied along with all associated software and refund the purchase price. SIEMENS shall be entitled to require appropriate restitution from the Customer for the use of the hardware and software. The Customer shall be obliged to inform SIEMENS immediately and is required to support SIEMENS in the defence of such claims. It is not permitted to recognize claims by third parties itself. Subject to these conditions, SIEMENS shall pay all the expenses incurred by the Customer.

11. Entry into force, term and termination of the contract

11.1. Each contracting party shall enter into a contract with the other contracting party, stating the date on which the contract granting the remote access comes to an end. This obligation shall not apply to documents and information which can be produced independently by the Customer or that it is compatible with systems not delivered by SIEMENS, and careful execution for a period of twelve (12) months after completion of the relevant Service or after delivery of the material concerned.

11.2. Each contracting party shall be entitled to give written notice of termination of the Contract (including these GTC pertaining thereto) and shall run at least until the end of the following calendar year (minimum term). The Contract shall then be renewed for a further calendar year at a time under which Party terminates it in writing by giving three (3) months’ notice before the end of that year.

11.3. Each contracting party shall be entitled to give written notice of termination of the Contract (including the GTC-MS pertaining thereto) with immediate effect for good cause, which shall apply in particular: a) in the event of severe, repeated or persistent breaches of contract caused through the fault of the other contracting party which are not fully remedied within a reasonable period of time despite being sent a written reminder; or b) if the other contracting party becomes permanently insolvent or bankruptcy or composition proceedings are applied for or opened against it or are rejected due to a lack of funds.

11.4. VIENNA CONVENTION shall furthermore be entitled to give written notice of termination of the Contract (including these GTC-MS) with immediate effect for good cause, which shall apply in particular: a) in the event of severe, repeated or persistent breaches of contract caused through the fault of the other contracting party which are not fully remedied within a reasonable period of time despite being sent a written reminder; or b) if the other contracting party becomes permanently insolvent or bankruptcy or composition proceedings are applied for or opened against it or are rejected due to a lack of funds.

11.5. The Contract shall be entitled to give written notice of termination of the Contract (including the GTC-MS pertaining thereto) with immediate effect for good cause, which shall apply in particular: a) in the event of severe, repeated or persistent breaches of contract caused through the fault of the other contracting party which are not fully remedied within a reasonable period of time despite being sent a written reminder; or b) if the other contracting party becomes permanently insolvent or bankruptcy or composition proceedings are applied for or opened against it or are rejected due to a lack of funds.

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11.7. Where the remote access is terminated, Siemens SIEMENS shall, for a period of 30 days from the date of termination, provide a file containing the customer’s data for downloading in exchange for reimbursement of its costs, where the customer so requests this prior to the time of termination and where the customer’s data are stored by Siemens.

12. Amendments to the contract

12.1 Amendments and addenda to this Contract (including the GTC-MS, the Service Description and other annexes pertaining thereto) shall be in written form in order to be valid. SIEMENS reserves the right to change the Flat Rate information in the cases specified in Clause 6.2. This requirement may only be waived in writing.

13. Applicable law and jurisdiction

13.1. The Contract or the Services Based on Time and Material (including these GTC-MS) shall be governed by Swiss substantive law. The United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention) of April 11, 1980 does not apply to this contractual relationship.

13.2. Zurich shall have jurisdiction for all disputes arising as a result of this Contract or the Services Based on Time and Material unless a different jurisdiction is required by law. SIEMENS shall, however, also be entitled to take legal action against the Customer at its domicile or registered office.