

1. General Provisions

- 1.1 Offers that do not include a deadline for acceptance (binding period) are not binding.
- 1.2 The Agreement has been formed upon dispatch of the order confirmation and the annexes to the same by Siemens. If no specifications document is attached to the Agreement, the goods and services (collectively called the "deliverable") shall be provided as stated in the technical specifications and the rules and regulations in force in Switzerland on the date of the offer.
- 1.3 Unless otherwise agreed in writing, the Purchaser acknowledges upon entry into the Agreement that the present Conditions of Delivery are binding. Any conditions of the Purchaser are not applicable.
- 1.4 Brochures and catalogues are not binding.
- 1.5 Customer-specific systems/products to be developed by Siemens shall be exclusively subject to the "General Delivery Conditions for Customer-specific Systems and Products" of Siemens.

2. Software

- 2.1 Siemens software is licensed, and not sold, under the end-user licence agreement (EULA) individually made or issued in conjunction with the software. The software is issued in object code without source codes. The licence only grants the right to use the software in connection with the deliverable. It may only be transferred together with the deliverable. The Purchaser does not have the right to modify or reverse engineer the software.
- 2.2 Any commercially available, standard software to be supplied by Siemens is exclusively subject to the applicable delivery and licence conditions of the respective manufacturer.
- 2.3 Insofar as the software contains Open Source Software ("OSS"), the OSS is listed in the menu under the heading "Licence Information" or in written documentation pertaining to the software. If the OSS licence conditions so require, Siemens shall issue the OSS source codes upon payment of shipping and handling costs.

3. Prices

- 3.1 Unless otherwise agreed, all Siemens prices are stated in Swiss francs. Deliveries are EXW of the respective Swiss storage location pursuant to INCOTERMS 2010.
- 3.2 In the event of a change in the circumstances on which the pricing is based, including but not limited to parties between currencies or public/official taxes, charges, fees and customs duties, etc. occurring between the time of the offer and the agreed delivery date, Siemens has the right to adjust prices and conditions to the altered circumstances.

4. Payment Terms

- 4.1 Unless otherwise agreed, invoices from Siemens are due immediately and must be paid no later than on the 30th day after the invoice date, without discounts or other deductions. Payment is deemed to have been made if the total amount due has been credited, free of charge, to an account identified on the invoice in Swiss francs and is fully available to Siemens. The Purchaser is not permitted to offset any counterclaims against the payment.
- 4.2 If the Purchaser fails to comply with the agreed payment periods, it shall be in default, no reminder being required, and it must pay default interest of 8% *per annum* as of the 31st day after the invoice date.

5. Reservation of Title

- 5.1 Siemens shall retain title to all of its deliverables until such time as it has received the agreed payments in full. Upon acceptance of the deliverable, the Purchaser authorises Siemens to register its reservation of title. For the period of reservation of title, the Purchaser shall maintain the delivered items at its own expense and insure them on behalf of Siemens against theft, breakage, fire, water damage, and other risks.

6. Delivery Period

- 6.1 The delivery period begins as soon as the Agreement has been entered into and all official formalities have been obtained or fulfilled, as the case may be. The delivery period shall be deemed to have been observed if the delivery has been made or the Purchaser has been notified that the deliverable is ready for shipment. Partial deliveries are permitted.
- 6.2 The delivery period shall be extended for a reasonable time:
 - if Siemens does not receive in a timely manner the information it requires in order to fulfil the Agreement, or if the Purchaser subsequently requests changes or additions;
 - if impediments arise that Siemens is unable to avert despite exercising due care, regardless of whether these impediments occur at the facility of Siemens, the Purchaser, or a third party. Such impediments include, by way of ex-

ample: export and import restrictions, boycott orders of national or supranational organisations, or official acts or omissions; labour conflicts and other disruptions of operations not attributable to Siemens, epidemics, natural phenomena, hacker attacks, and terrorist activities. Should such impediments occur, Siemens shall inform the Purchaser promptly and keep it apprised of the extent and background of the impediments.

- if the Purchaser or third parties engaged by it default on performing the work to be executed by them or on fulfilling their contractual duties, or if the Purchaser fails to comply with the payment terms.
- 6.3 In case of delays demonstrably caused by Siemens, the Purchaser has the right to claim compensation for losses resulting from default, provided the Purchaser can prove that it has incurred a loss. If the Purchaser receives a substitute delivery in a timely manner, the aforementioned claim shall not apply.
 - 6.4 As of the end of the second week, the compensation shall be no more than 0.5% for every full week of delay, but in total no more than 5%, calculated on the contractual price of the delayed portion of the deliverable.
 - 6.5 Once the compensation for losses resulting from default has reached the maximum, the Purchaser may grant Siemens a reasonable grace period in writing. If Siemens fails to comply with this period for reasons attributable to Siemens, the Purchaser has the right to decline acceptance of the late portion of the deliverable. If partial acceptance is financially unreasonable for the Purchaser, the Purchaser has the right to withdraw from the Agreement and to reclaim any prior payments made in exchange for return of the corresponding deliverables.
 - 6.6 As regards late delivery or services, the Purchaser has no rights or claims except for those expressly specified in this para. 6.
 - 6.7 If a particular date is agreed upon in lieu of a delivery period, this date shall be considered as the last day of a delivery period. Paragraphs 6.1 through 6.6 are applicable accordingly.
- ## 7. Transfer of Benefit and Risk
- The benefit and risk shall pass to the Purchaser upon dispatch of the report that the deliverable is ready for shipment. If no report is made, the benefit and risk shall pass at the beginning of the transport to the storage site. If delivery, assembly, or installation is delayed at the Purchaser's request or for other reasons not attributable to Siemens, the risk shall pass to the Purchaser at the date and time originally scheduled.
- ## 8. Inspection and Acceptance
- 8.1 The execution of an acceptance inspection, as well as the conditions of this inspection, shall require a separate agreement.
 - 8.2 The Purchaser must inspect the deliverable upon receipt and notify Siemens immediately in writing concerning any defects. If the Purchaser fails to do this, the deliverable shall be deemed approved.
 - 8.3 Siemens shall correct the defects reported to it in accordance with para. 8.2 as soon as possible either through repair or substitute delivery, at its option. The Purchaser must grant Siemens the time and opportunity necessary to correct the defects. Replaced parts must be returned to Siemens.
 - 8.4 In respect of defects of any kind in the deliverable, the Purchaser has no rights or claims except for those expressly referred to in this para. 8 and in para. 9 (Warranty).
- ## 9. Warranty
- 9.1 Unless otherwise agreed, the warranty period for the deliverable is 24 months. This period shall begin to run upon the unloading of the deliverable at the Purchaser's delivery site in Switzerland. If shipment is delayed for reasons not attributable to Siemens, the warranty period shall end no later than 30 months from the date of notification that the deliverable is ready for shipment.
 - 9.2 For substituted or repaired parts of the deliverable, the warranty period is six months from the date of substitution or repair, if the warranty period for the deliverable expires earlier. In any case, the warranty period shall end no later than 30 months from the beginning of the original warranty period.
 - 9.3 The warranty shall expire prematurely if the Purchaser or a third party makes alterations or repairs without the prior written consent of Siemens or if the Purchaser, having identified a defect, fails to take immediately all proper measures to mitigate losses, notify Siemens of the defect and grant Siemens the opportunity to correct the same.
 - 9.4 Siemens agrees, upon the written request of the Purchaser, to correct or replace, at its option, as soon as feasible all parts of the deliverable that become damaged or unusable because of poor material, faulty construction, or defective execution until

- the expiry of the warranty period. The rejected parts must be delivered to Siemens upon request. Where Siemens does not request such return, the parts shall be disposed of by the Purchaser.
- 9.5 The only warranted qualities are those expressly designated as such in the order confirmation. The warranty is deemed to have been fulfilled if proof of the relevant quality has been provided at the time of the acceptance; otherwise, the warranty applies until the expiry of the warranty period, and no longer. Unless the warranted qualities are satisfied in full, the Purchaser shall initially have the right to correction by Siemens. Unless this correction is fully successful, the Purchaser has the right to a reasonable reduction of the price. If the defect is so serious that it cannot be corrected within a reasonable period, and if the deliverable cannot be utilised for the agreed use, the Purchaser has the right to decline acceptance of the defective part or, if it is unreasonable for the Purchaser to accept a partial delivery, the Purchaser may withdraw from the Agreement. Siemens may only be required to refund the amounts it has been paid for the parts of the deliverable affected by this withdrawal.
- 9.6 The warranty and liability of Siemens do not cover losses that have not demonstrably arisen from poor material, defective construction or faulty execution, e.g., as a result of normal wear and tear, faulty maintenance, non-compliance with operating rules, undue strain, inappropriate equipment, chemical or electrolytic effects, construction or assembly work not performed by Siemens, or for other reasons not attributable to Siemens.
- 9.7 In the event of defective software, a prerequisite for correction of defects is that the defect must be documented in detail, where possible, and reproducible in the unaltered original version on the contractually specified reference or target hardware. Defects in the software shall be corrected initially via upgrade or update where this is possible at reasonable costs. If the defect prevents the Purchaser from completing important, time-sensitive tasks, Siemens shall find a workaround where this is possible within a reasonable time and effort. In the event of loss of or damage to data and/or data media, the warranty only covers the installation of backed-up data.
- 9.8 The Purchaser has no rights and claims other than those expressly indicated in paras 9.1 through 9.7 in respect of defects in materials, construction or execution, as well as in respect of the absence of warranted qualities.
10. **Other Liability**
Any claims of the Purchaser other than those expressly specified in these Delivery Conditions, regardless of legal basis, in particular, all claims for compensation, reduction of the purchase price, cancellation of or withdrawal from the Agreement that are not expressly specified, are excluded. Under no circumstance shall the Purchaser have any right to compensation for losses not incurred by the deliverable itself, such as loss of production, loss of use, loss of orders, lost profits, or other direct or indirect losses. This limitation of liability does not apply in case of gross negligence or wrongful intent or where precluded by mandatory law.
11. **Compliance with Export Control Regulations**
The Purchaser acknowledges that the deliverables may be subject to Swiss and/or foreign legal rules and regulations concerning export control and, in this case, they must not be sold, rented, or otherwise transferred or utilised for other than the agreed use without an export or re-export permit, as the case may be, from the competent authority. The Purchaser shall undertake to comply with such rules and regulations. The Purchaser acknowledges that these rules and regulations may change and shall apply to the Agreement in the wording in force from time to time.
12. **Confidentiality and Data Protection**
- 12.1 Siemens and the Purchaser shall undertake to treat confidentially all documents, information, tools and software received in connection with this Agreement and not publicly available, as their own trade secrets, even after the termination of the Agreement, and to refrain from distributing them unnecessarily within their respective companies and from making them available either in whole or in part to third parties, except subcontractors.
- 12.2 If, in the course of its work on the deliverable and documentation, Siemens processes personal data, Siemens shall comply with the relevant data protection laws. Siemens shall take appropriate measures to safeguard such data against unauthorised access by third parties.
- 12.3 The Purchaser acknowledges that the data, information and documents concerning the Purchaser may be stored inside or outside Switzerland. They may be disclosed to Siemens AG, Munich, Germany and to its affiliates for purposes of fulfilling the Agreement.
13. **Governing Law**
The contractual relationship shall be governed by the substantive laws of Switzerland. The UN Convention on Contracts for the International Sale of Goods (UN CISG) of 11 April 1980 shall not apply to this contractual relationship.
14. **Venue**
The venue for both the Purchaser and Siemens is Zurich. However, Siemens also has the right to take legal action against the Purchaser at the domicile of the latter.