

Terms and Conditions of Delivery of Siemens Aktiengesellschaft Österreich, Smart Infrastructure Regional Solutions Europe (Edition May 2024)

1. Applicability

These terms and conditions (hereinafter referred to as "**Terms and Conditions of Delivery**") apply to deliveries of goods and provision of services of all kinds (such as analysis and advice, project planning, delivery, assembly, commissioning, software programming, mechanical or electronic repair) (hereinafter referred to as "**Delivery**" or "**Service**") by Siemens Aktiengesellschaft Österreich, Smart Infrastructure, Regional Solutions Europe (hereinafter referred to as "**Contractor**").

Derogations from these Terms and Conditions of Delivery shall be effective only upon the Contractor's written acknowledgement.

2. Offer & Conclusion of contract

Unless explicitly described otherwise (e.g. as subject to change or reference price offer), an offer shall be deemed a binding offer.

A contract will be deemed concluded, if and when the Customer accepts a binding offer of the Contractor on the terms and conditions stated therein or places a purchase order on the aforementioned terms and conditions and such declaration of will is documented in accordance with Clause 23.1. Purchase orders which are not based on a binding offer will be accepted as set forth in Clause 23.1 but at the latest upon commencement of performance. Delivery and/or performance periods will start to run only upon acknowledgment of the relevant (purchase) order by the Contractor and fulfilment of all terms and conditions agreed upon separately (e.g. receipt of down payments).

Claims of the Customer on account of the legal doctrine of *laesio enormis*, error, or frustration of contract are excluded.

3. Customer's duties to cooperate

The following duties to cooperate are indispensable for smooth Delivery of goods or provision of Services. If the requirements or duties to cooperate stated in the following paragraphs are not fulfilled in time or not in full, the performance period will be extended accordingly. The costs incurred by the Contractor because of the extension of the period shall be borne by the Customer.

3.1 General duties to cooperate

As a requirement for commencement and unimpeded performance the Customer is required to bring about the contractually agreed and technically necessary conditions at its cost. Depending on the subject matter this shall include all approvals, permits and notifications, funding commitments, official permits and commissioning, and certifications by third parties.

This shall also include physical access, technical preparations and the bringing about of technical conditions (preliminary work of other craftsmen, data preparation, interface specifications), clearing work for construction, completion and inspection of its own preliminary work and that of other craftsmen, negotiations with third parties and obtaining the consent of third parties for using plots of land, and any other conditions specified in the Contractor's offer or agreed in the contract in the quantity and quality specified by the Customer or its third parties which are necessary for the Contractor to commence performance.

The Customer is responsible for ensuring that all information provided which is relevant to provision of the Service and/or the usage behaviour of the Customer or its customer will be accurate, complete, and not misleading.

At the time of commencement of provision of Services (e.g. assembly work) on site, the Customer must make available lockable rooms and sanitary facilities as per the regulations on safety and health at work

to the Contractor's staff at no extra costs. In addition, the Customer will provide electricity, water and heating to the extent required for provision of the Service free of charge. The Customer is liable for loss of tools or material caused by burglary, theft or comparable impacts on the space made available by the Customer.

3.2 Special duties to cooperate regarding software services

Unless agreed otherwise in the contract, where the Delivery or Service concerns software or where granting of a licence is the subject matter of the contract, the Customer is furthermore responsible for

- (a) selecting the software offered by the Contractor;
- (b) providing all information required to prepare specifications if the Service includes development or parameterisation of custom software;
- (c) using the software and the results obtained thereby, and
- (d) promptly installing new versions and updates made available to the Customer.

The Contractor provides the specifications for standard software. For custom software ordered by the Customer specifications shall be agreed between the Contractor and the Customer in writing, based on which the Contractor will make its software specifications.

Software specifications may include features, documents on special functions, hardware or software requirements, installation requirements, operating conditions, or operation (user manual).

The Customer is responsible for compliance with the software specifications, including but not limited to the operating conditions, and obtaining and complying with official approval terms, if any.

4. Prices

Unless agreed otherwise, Services will be billed according to hours worked and expenses incurred ("**as actually incurred**") and according to site measurements (see Clause 4.2). Upon express written agreement a lump-sum price may be agreed upon (see Clause 4.1). Unless expressly agreed otherwise, Services will be provided during the Contractor's normal business hours (see: <https://asc.siemens.at/recht>, drop-down "Billing rates" menu).

Unless agreed otherwise, the prices offered for any form of pricing shall be deemed subject to change as defined by the Austrian Standard ÖNORM B2111 as revised on 1 May 2007. The price basis is the index published by the Austrian Federal Ministry for Digital and Economic Affairs (BMDW) on changes in construction costs, category: electrics - installation - lightning protection - industry, split into "Wages" and "Other", which can be viewed at www.preisumrechnung.at. The basis for calculation of the value change will be the index figure for the month in which the offer is made.

4.1 Services at lump-sum prices

The lump-sum price covers the Services to be provided by the Contractor as agreed in writing. As described in Clause 3, it is subject to timely completion of any preliminary work by the Customer that may be necessary and to unimpeded performance. Any Service changes or extra costs will be treated in accordance with the relevant regulations of these Terms and Conditions of Delivery.

4.2 Services invoiced as actually incurred

(A) Staff costs

The Customer confirms to the Contractor's staff their hours worked to provide the Service on time sheets, work reports or similar evidence ("**Time Records**").

Any idle times of the Contractor's staff not at the fault of the shall be considered working time. If the Customer does not confirm the Time Records within four (4) calendar days or rejects the same within that period without giving a reason in writing, the Contractor's records shall be deemed approved. Hours worked will be charged at the billing rates applicable at the time of provision of the Service, which can be viewed at: <https://asc.siemens.at/recht>, drop-down "Billing rates" menu. The smallest billing unit is 30 minutes.

Local Services; Remote Services; Services Abroad; Remote-controlled Services

The billing rates for "Local Services" apply to Services rendered by the staff of a branch of the Contractor within the administrative territory of the city, town, or district where the commissioned branch has its registered office. Provision of Services outside such administrative territory shall be deemed "Remote Services". "Services Abroad" means Services provided by staff outside Austria.

In the case of Remote Services or Services Abroad the Customer will be invoiced the surcharges to which the staff is entitled under collective bargaining agreements (such as expense allowance, overnight allowance, etc.) for every Saturday, Sunday, and public holiday during provision of the specific Service, irrespective of whether Services are actually rendered on that day.

Remote-controlled Services (Clause 5 below) will be charged according to the billing rate for Local Services applicable from time to time.

Overtime; Work at night; Work on Sundays or public holidays; Substitute rest periods

Overtime (meaning hours worked in addition to the normal daily working time or during non-working time as defined by the collective bargaining agreement for employees in the Austrian electrical and electronics industries) will be invoiced with the overtime surcharge added.

Work at night (between 7 p.m. and 6 a.m.) will be invoiced with the night surcharge added.

Work on Sundays, public holidays or 24 December will be invoiced with the Sunday or public holiday surcharge added.

If overtime or work at night, on Sundays or public holidays is required in connection with a lump-sum order or Services charged at standard hourly rates (*Einheitssätze*), the amount exceeding the relevant applicable normal hourly rate will be charged separately for such work.

Notwithstanding any lump sum or flat rates agreed, substitute rest periods as defined in the provisions of the Austrian Rest Periods Act [*Arbeitsruhegesetz/ARG*] shall be compensated for in accordance with the provisions of the collective bargaining agreement for employees in the Austrian electrical and electronics industries applicable at the time of provision of the Service.

Work under difficult conditions

In the case of underground work (tunnels, cavities) one shift means eight hours of normal working time. For underground work (tunnels, cavities) or work on hazardous construction sites (e.g., on roofs, scaffolding, lifting platforms, etc.), for dirty work, welding work, working with chemicals, and night shift work, and work at heights of more than 1,000 m above sea level, or work under particularly difficult conditions (e.g. used traffic areas) a surcharge of 10% will be added to the applicable hourly rates.

Accommodation costs and travel time

Unless expressly agreed otherwise, accommodation and travel time of the Contractor's staff is not included in the price and will be

reimbursed as actually incurred according to the applicable billing rates at: <https://asc.siemens.at/recht>, drop-down "Billing rates" menu.

Travel time means the time required for travelling from the branch or temporary accommodation taken by the staff for the purpose of provision of the Service to the place of performance and from the place of performance back to the branch or temporary accommodation, and the time travelled between two places of performance on a particular calendar day. The Contractor will charge the travel time of each staff member at the normal hourly rates applicable plus the kilometre allowance, i.e. the allowance to which they are entitled for kilometres driven under tax law applicable at the time of driving. For travel times after the normal working time the surcharge applicable will be added to the normal hourly rate. If only reimbursement of the cost of use of public transport has been agreed in the contract, the travel times required for public transport will be charged in addition to such reimbursement.

Accommodation costs and travel expenses will be charged even if a lump sum or flat rates have been agreed for the provision of the Service and billing of the same has not been expressly excluded in the contract.

(B) Spare parts

Spare parts installed by the Contractor installation of which was not known to be necessary at the time of conclusion of the contract will be charged separately as actually used at the Contractor's prices for materials applicable at the time of installation.

4.3 Taxes

All prices are net of value added tax and, unless agreed otherwise, net of other taxes, charges, or fees.

4.4 Dealing with changed bases of the offer

The Contractor's offer is based on the laws, statutes, applicable standards, other legislation, prices for materials, billing rates and rates defined by collective bargaining agreements in force at the time the offer is made, and on the technical and quantitative bases (plans, technical documentation, etc.) and other requirements of the Customer which are available to the Contractor at the time the offer is made. If subsequent changes lead to additional costs or delays or require adjustments of Services, the Contractor will be entitled to be paid the resulting additional costs and to a reasonable adjustment of the schedule.

5. Remote-controlled Services

Remote-controlled Services (including remote access and remote maintenance) will be rendered by using one or several remote-controlled applications operated (in part) locally on the Customer's hardware and/or hosted on a remote server and/or available via a web or IP address provided by the Contractor. In addition to such service, the Contractor will also provide the Material (Clause 13; such service and Material hereinafter together referred to as "**Web-based Services**").

The Customer will allow remote control via a telecommunication connection to be set up at its cost. The technical requirements to be met for such connection (e.g., setting up a broadband connection) shall be brought about and maintained by the Customer at its own cost. The Customer will provide all technical systems required for provision of Remote-controlled Services and will issue the necessary authorisations for the Contractor.

For performance of the contract, companies affiliated with the Contractor within the meaning of Section 15 of the Austrian Stock Corporation Act ("Affiliates") and other subcontractors commissioned by the Contractor are also authorised to provide all contractually agreed Services including the repair of defects remotely.

6. Delivery

6.1 Acceptance of Delivery

Unless agreed otherwise, goods will be delivered according to the

rules for DAP destination Austria as per the INCOTERMS® 2020. If explicit acceptance by the Customer has been agreed, goods shall be deemed accepted on the first working day following delivery unless defects identified during spot checks are notified in writing.

6.2 Delivery of software

Unless otherwise agreed in the contract, the Contractor will deliver the software to the Customer in machine-readable form. This may be done either by physical delivery or delivery of a physical data storage medium or by making the software available electronically (e.g. download). The Contractor is entitled to deliver the most recent version of the software that is available at the time of delivery.

If no delivery date is agreed, the Contractor will notify the Customer of the delivery date.

Shipping of software or data storage media will be at the Customer's risk.

7. Acceptance

7.1 Acceptance of work

If a work of any kind is created, the Contractor shall notify the Customer of completion of the Services. Unless agreed otherwise, the Customer shall inspect the work immediately and not later than within 7 (seven) calendar days and accept the same immediately thereafter. Acceptance may only be refused on the ground of severe deviation from the Service owed (i.e. because of a deviation which materially compromises the characteristic function or operational safety of the work created or the work on which the Service was provided).

If acceptance of the work is delayed without the fault of the Contractor, the work shall be deemed accepted after 7 (seven) calendar days or after expiry of the contractually agreed period, calculated from the day of notification of completion of the work. Commercial or in-house use of the Contractor's work by the Customer shall in any case be deemed acceptance.

The risk in connection with the Service (or any part thereof) will pass to the Customer as early as at the time of commencement of the provision of the Service (part) by the Contractor.

7.2 Acceptance of software

If an acceptance procedure for software deliveries has been provided for, the Customer will be made available the software for free-of-charge use during a trial period. The trial period will start upon delivery of the software or at the time it is made available electronically and will last one week unless otherwise agreed in the contract.

After expiry of the trial period the software shall be deemed accepted, provided that

- (a) the Customer confirms compliance with the contractual specifications, or
- (b) the Customer does not notify material defects in writing during the trial period, or
- (c) the Customer uses the software in its business after expiry of the trial period.

If no acceptance has been provided for, the time of delivery will replace acceptance in terms of the legal consequences of warranty. In any case the risk will pass to the Customer upon delivery.

8. Performance deadlines

Any completion deadlines indicated for completion will be binding only if agreed to be binding expressly and in writing. Otherwise, the

indicated deadlines merely serve as guidance.

8.1 Force majeure

The parties shall not be liable for events of force majeure.

"Force Majeure" means external circumstances which cannot be avoided and the consequences of which cannot be rendered harmless, not even when exercising utmost care, and include, without limitation, war, civil war, revolutions, unrest, terrorist attacks, piracy or sabotage, cyber-attacks, taking of hostages, strikes, acts of God of any kind, including but not limited to storms, earthquakes, floods, volcanic eruptions or fire, radioactive contamination, embargoes or other sanctions non-observance of which may lead to a penalty or other disadvantage for the Contractor, any of its Affiliates or suppliers, delivery stops, supply shortages, shortage of means of transport, blocks of transport routes, default of an important supplier who is difficult to replace, and other problems in the supply chain, the outbreak and/or spreading of major diseases, epidemics or pandemics, and actions or omissions by public authorities (such as the non-approval of export licenses), including actions occurring despite an application in due form and time.

The party affected by Force Majeure shall immediately notify the other party thereof in writing.

If a party is prevented from fulfilling its contractual obligations in whole or in part by a Force Majeure event, all consequences of default will be suspended and periods of/deadlines for delivery and/or performance will be adjusted to the extent of the effects of Force Majeure, even if such circumstances occur with subcontractors or suppliers.

The costs for implementing measures to minimise the effects of Force Majeure shall be reimbursed by the Customer in full, even if a lump sum or flat rates have been agreed. If additional costs are incurred in connection therewith or with acceleration measures expressly requested by the Customer, the Contractor shall advise the Customer of such costs in the form of an offer and obtain the Customer's approval as a condition for implementation.

If the effect of a Force Majeure event continues for more than three months, either party shall be entitled to terminate the contract with respect to those parts of the contract that have not yet been fulfilled or commenced yet. Upon the request of either party the respective other party will, after expiry of that period, state whether it will exercise its right of termination.

9. Dealing with impediments to or other interruptions of performance

Expenses resulting from impediments to or other interruptions of performance for reasons for which the Contractor is not responsible shall be reimbursed by the Customer in full, even if a lump sum or flat rates have been agreed. Regarding acceleration measures requested by the Customer, if any, the last sentence of Clause 8.1(5) applies accordingly.

10. Payment

The Service rendered will be invoiced after acceptance. In the case of Services, the provision of which lasts for more than one month one third of the price will be invoiced at the time of acknowledgment of the (purchase) order, one third of the price will be invoiced after half of the delivery period, and the rest will be invoiced at the time of acceptance of the Service unless otherwise agreed. Recurring Services shall be invoiced pro rata for the agreed period quarterly in advance by means of a partial invoice, unless expressly agreed otherwise.

In the absence of a different agreement, invoice amounts shall be paid to the account stated on the invoice immediately (within 14 days of the invoice date) and without any deduction. All related taxes, expenses and interest shall be payable by the Customer.

Either party may offset its own claims only against, or assert rights to withhold payment only for, claims arising from this contractual

relationship that are undisputed or have been ascertained in a non-appealable/final manner.

Payments shall be deemed made on the day on which the Contractor is able to use the amount. If the agreed payment dates are not observed, the evidenced overdraft interest charged by the bank, however at least 10% p.a. will be charged notwithstanding any other rights the Contractor may have.

The Services provided by the Contractor remain the property of the Contractor until full payment of the agreed prices plus taxes, expenses, and interest, if any.

The Customer hereby assigns to the Contractor its receivables from any resale of items title to which has been retained as security for the latter's payment claims, even if such items are processed, remodelled, or commingled. In the case of resale including a respite of payment of the price the Customer will be authorised to use the goods title to which has been retained only on the condition that the Customer informs the second purchaser of the assignment for security or notes down the assignment in its books concurrently with the resale. Upon request the Customer shall notify the Contractor of the assigned receivable and the name of the debtor and provide all information and documents required for collection of its receivables and inform the third-party debtor of the assignment. In the case of attachment or other seizure the Customer must refer to the Contractor's title and notify the Contractor immediately.

11. Ancillary and additional services

If the Contractor's staff provide ancillary craft work (e.g. earthwork, mason's work, paintwork, and the like) or ancillary coordinating work (e.g. briefing, giving instructions, permanent local construction management or occasional inspection of the work, introductory training, attendance at meetings, transportation services, and the like) in the course of provision of the Service, or if they have to clean up after completion of the Service, carry out follow-up work after construction (such as tightening terminals or lines) or render additional services (such as operating the systems provisionally) or restoration services (e.g. replanting, restoring railings or driveways, and the like) or if the Contractor supplies ancillary materials (e.g. wedges, cement, grease, and the like), then the Customer shall pay for those Services in accordance with these Terms and Conditions, even if a lump sum or flat rates have been agreed for the original Services.

The billing rates include the costs for usual tools of craftsmen but no special equipment. If special auxiliary equipment is required to provide the Services (such as, e.g., all kinds of pumps, hoists, carts, lifting devices, ladders, driving devices, measuring devices, and the like), use of the same will be charged as incurred plus a 15% administrative surcharge on the total cost, unless expressly agreed otherwise. The same applies where storage sheds or construction site huts including equipment, setting up and dismantling of the same are required to provide the Service and the Customer does not provide the same free of charge.

12. Warranty

12.1 Scope and period of warranty

The Contractor undertakes to remedy every defect detrimental to the functionality existing at the time of delivery and/or acceptance of the Service.

Warranty will commence upon delivery to the Customer and/or acceptance of the Service. Claims will become time-barred immediately upon expiry of the warranty period. The warranty period for movables is 18 months and for immovables it is 24 months. If performance is delayed due to circumstances which are beyond the Contractor's sphere of control, the warranty period will start to run two (2) weeks after readiness for performance. The warranty period for repaired or replaced parts of a Delivery will be no more than six months longer than the original warranty period irrespective of commencement of the latter, which means that the total warranty

period will in any case end after 24 months for movable items and after 30 months for immovable items.

All ancillary costs arising in connection with repair of defects (such as, e.g., for installation and dismantling, transportation, disposal, and travel times) shall be borne by the Customer.

Software maintenance (e.g. error diagnosis and troubleshooting, maintenance, etc.) which does not constitute a repair of defects, and bearing of the related costs shall be agreed separately. There shall be no obligation to update Deliveries or Services (as defined in Section 7 of the Austrian Consumer Warranty Act [*Verbraucher-gewährleistungsgesetz/VGG*]).

If the Contractor provides a Service based on design descriptions, drawings, models or other specifications provided by the Customer, the Contractor's liability shall only extend to execution as agreed.

12.2 Prerequisites for warranty

To claim warranty, the Customer must give written notice of the occurring defect and provide all information necessary for repairing the same within a reasonable period of time.

The Customer shall provide the Contractor with all documents, information, auxiliary devices, and support staff necessary for carrying out warranty work on the Customer's premises. Title to replaced parts will pass to the Customer.

12.3 Additional prerequisites for warranty for software

The prerequisites for repair of defects in software are that (a) the irregularity disrupts functionality, (b) it can be reproduced, (c) the Customer has installed new versions or updates that may have been offered to it free of charge within the warranty period, and (d) the Contractor is granted access to hardware and software during the Contractor's normal working time.

12.4 Exclusion of warranty

Warranty claims may not be asserted based on statements or promises merely made orally or information contained in brochures, catalogues, or advertising material.

If Services rendered by the Contractor are changed or modified by the Customer or an unauthorised third party, warranty will cease immediately upon such change or modification. Third parties may be authorised by the Contractor only in writing.

The Contractor is not liable for defects attributable to damage caused by actions of third parties, atmospheric discharges, overvoltage, or chemical impacts. Warranty is also excluded for parts which are subject to natural wear and tear.

Unless agreed otherwise, warranty is excluded for any defects resulting from arrangement or assembly not effected by the Contractor, insufficient configuration, non-observance of installation requirements or conditions of use, excessive use of parts, negligent or incorrect treatment or use or operation. This also applies to defects attributable to material or hardware and/or hardware configurations provided by the Customer or third parties.

Unless agreed otherwise in the contract, the Contractor does not assume any warranty for third-party software which is not part of the contract, for compatibility of the software which is the subject matter of the contract with other software programs used or planned to be used by the Customer or for merely short-term interruptions and/or malfunctions which are typical of software.

Defects in specific programs do not entitle the Customer to terminate the contract with respect to the other programs. Unless otherwise agreed in the contract, any other claims on account of defects in the software are excluded, except for those defined in Clause 12.

13. Rights of use

13.1 Granting of rights; Restrictions on use

For the software (including upgrades and updates) made available to the Customer, other intellectual property made available for use and the Web-based Services (as defined in Clause 5(1), the Contractor will grant the Customer a non-exclusive, non-transferable and non-sublicensable right to use the standard software, intellectual property and Web-based Services made available to the Customer in object code, namely (i) the standard software and intellectual property on the agreed installation site as specified in the contract and for the purposes underlying the contract and (ii) Web-based Services exclusively for its internal business purposes. All other rights to the standard software, intellectual property and Web-based Services are reserved to the Contractor and its licensors.

Without the prior written consent of the Contractor and notwithstanding the provisions of Section 40d of the Austrian Copyright Act [*Urheberrechtsgesetz/UrhG*] the Customer is, therefore, not entitled, *inter alia*, to reproduce or modify (including by reverse engineering or disassembling) standard software, intellectual property or Web-based Services or make them accessible to third parties, to combine them with other services, to sell or resell, let, lease or assign the same or to transfer any rights in whole or in part or in the case of standard software to use it on hardware other than that agreed in the contract. The licence is subject to the condition that the Customer will always meet all requirements of these Terms and Conditions of Delivery.

The Customer is prohibited from editing or integrating into its own services the information, documents, software, products and services or other material (text, graphics, logos, button icons, images, audio clips, data, photos, graphics, videos, fonts or audio recordings) (hereinafter collectively referred to as "**Material**") provided by the Contractor in this connection or otherwise.

Where the Services of the Contractor contain open-source components or third-party software, the applicable open-source licence terms, or third-party licence terms apply and prevail over these Terms and Conditions of Delivery.

In connection with the provision of Services the Contractor and/or its Affiliates (or, if required, subcontractors or suppliers of the Contractor and/or its Affiliates) may obtain, receive, collect, store and process Customer Content, system-specific data, meta data, automatically generated data, or any other type of information, data or content from the Customer, users, connected devices or third parties using or having used the Services ("**Collected Data**"). Customer Data means content (data, text, audio, video, images, models or software) entered by the Customer or any user when using the Web-based Services and any output generated by the Customer or any user through use of such web-based Services based on such content, excluding any third-party content or other content owned or controlled by the Contractor or its Affiliates or their respective licensors or made available by the Contractor or its Affiliates through or within the Web-based Services.

The Customer hereby grants the Contractor and/or its Affiliates (and their respective subcontractors and suppliers acting on behalf of the Contractor and/or its Affiliates) a non-exclusive, transferable, sublicensable, worldwide, royalty-free, perpetual, non-revocable right to use the Collected Data in order to (i) provide the Services, (ii) improve the Services, (iii) provide new and additional services, enhance its services with new features, modifications, changes as the Contractor sees and/or its Affiliates see fit, and (iv) create derivative works and aggregated data derived from Collected Data, other customers of the Contractor and/or its Affiliates, third parties and other sources (e.g. comparative data sets, statistical analyses, reports and related services (collectively "**Siemens Data**")). The Contractor and its Affiliates may utilize Siemens Data within their sole and absolute discretion for any purpose. Siemens Data does not incorporate information and data specifically identifying the Customer or third parties as company and/or personal data of users. While

Collected Data may contain confidential information of the Customer or personal data of users, Siemens Data does not.

The Customer represents and warrants that it has obtained all rights, permissions and consents necessary for the Contractor and/or its Affiliates to the aforesaid use of Collected Data as part of the Services and permits the Contractor and/or its Affiliates to exercise all of their rights under the contract. The Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Content. Neither the Contractor, its Affiliates, nor any of their subcontractors/suppliers shall be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store the Collected Data and/or Siemens Data.

Whenever Customer would disconnect a connected device from the Web-based Services, the Collected Data related to such disconnected device which was uploaded, created and/or modified by the Customer via the Web-based Services before such disconnection will remain stored in the Web-based Services, unless the Customer requests the Contractor and the Contractor agrees to (i) perform removal on behalf of the Customer and (ii) return such Collected Data to the Customer. Terms and conditions for such removal shall be agreed between the Contractor and the Customer. It shall be the Customer's sole responsibility to proceed at its own costs with any action it deems necessary to ensure that all connected devices are disconnected from the Web-based Services without undue delay from the date on which the Customer's account is deactivated or, as applicable, from the date of expiration or termination of the contract.

Should the Customer store data manually in connection with Web-based Services, the Customer will be solely responsible for all related consequences. If data is subject to special statutory provisions (e.g. regulatory requirements), the Customer shall inform the Contractor thereof in writing in advance to enable the Contractor to examine the same. If the intended storage is possible, details on a special treatment, if any, of data by the Contractor shall be agreed in writing.

13.2 Duration; Termination

The duration of the right of use defined in Clause 13.1 depends on the contract. The right of use shall in any case cease upon expiry of the agreed period of use or is limited to the period of use of the hardware defined in the contract.

In the case of termination of the right to use software the Customer shall, at the Contractor's option, return to the Contractor the entire software including any documents provided or demonstrably destroy the same. This also applies to modified software or software combined with other programs.

In the case of custom software, if no agreement on the acceptance of the specifications for custom software can be reached within a reasonable period, the Contractor shall be entitled to terminate the contract with immediate effect. Services rendered up until then shall be reversed in accordance with and subject to the statutory provisions.

If the Customer fails to fulfil its obligations under Clause 13.1, the Contractor shall be entitled to refuse performance and to terminate the contract after having granted a reasonable grace period. The Customer is in any case liable for all damages (e.g. idle times) suffered by the Contractor due to non-fulfilment of such obligations.

14. Industrial property rights and copyright

Execution documents, such as, e.g., plans, sketches, and other technical documents as well as specimens, catalogues, brochures, illustrations and the ideas, know-how, patents and the like gained during execution of the contract, remain the Contractor's exclusive intellectual property at all times.

If a third party asserts legitimate claims vis-à-vis the Customer for infringement of proprietary rights by the Deliveries or Services of the Contractor, the Contractor will, subject to the following regulations of this Clause 14, take one of the following actions at its choice and cost:

- (a) obtain a right to use the Deliveries or Services concerned, or
- (b) modify the Deliveries or Services to the effect that they no longer infringe the relevant proprietary right, or
- (c) replace those parts of the Deliveries or Services which infringe rights.

If the Contractor is of the opinion that none of the above actions will be possible at reasonable costs, the Contractor will take back the part of the Deliveries or Services concerned and refund the price for that part.

The aforementioned obligations of the Contractor will only arise if the Customer:

- (a) immediately notifies the Contractor in writing of the claims asserted by the third party and provides the Contractor with copies of all information, notifications, documents and other measures regarding the alleged infringement of proprietary rights;
- (b) does not acknowledge an infringement, sufficiently authorises the Contractor, reasonably informs the Contractor and duly cooperates in the defence, and
- (c) reserves all defence measures (including the choice of a lawyer) and settlement negotiations for the Contractor.

If the Customer discontinues use of the Deliveries or Services or a substantial part thereof, it shall give the third party written notice about the fact that discontinuation of use does not mean that an infringement of proprietary rights is acknowledged.

Any claims and rights of the Customer are excluded to the extent that the Customer (including its representatives, employees or contractors) is responsible for the infringement of the proprietary right(s), in particular where the infringement of the proprietary right(s) is due to specifications of the Customer or was caused by use of the Deliveries or Services for a purpose or in a way which was not foreseeable by the Contractor, by a change or modification of the Deliveries or Services by the Customer or by use of the Deliveries or Services in combination with other equipment. In those cases, the Customer shall indemnify and hold harmless the Contractor.

This Clause 14 exhaustively regulates the Contractor's total liability for infringement of proprietary rights of third parties. Additional or other claims or rights of the Customer are excluded.

15. Confidentiality

The parties undertake to keep confidential any Confidential Information they receive from the respective other party, its affiliates as defined in Section 189a No. 8 of the Austrian Business Code [*Unternehmensgesetzbuch/UGB*], representatives or contractors for a period of 5 (five) years after disclosure of such Confidential Information, independent of conclusion or termination of the contract.

To this end, the parties will take precautions equal to those used by them to protect their own Confidential Information but in any event at least reasonable precautions. The parties shall use Confidential Information they receive only in connection with performance of the contract and shall disclose it only to those employees, employees of their affiliates, representatives and contractors who need it for that purpose and who were put under a similar obligation to maintain confidentiality.

"Confidential Information" means information marked or designated as confidential at the time of disclosure or the confidential nature of which is obvious to a reasonable person, (such as, in particular, offer and project documents). It does not include information which (i) is generally available or comes so without breach of this provision, (ii) comes to the attention of a party other than through the other party, unless such party has reason to believe that such information is subject to a confidentiality obligation, (iii) was already in the possession of a party prior to receipt by the other party without a confidentiality obligation, (iv) is independently developed by a party

without use of the Confidential Information, or (v) has been released by a party in writing.

The Contractor may demand that the Customer return or destroy Confidential Information disclosed to the latter if the purpose for disclosure of such Confidential Information no longer exists (for example, if the purchase order is placed with another party after the offer was made or if a party terminates the contract).

16. Data protection

Each party will comply with applicable data privacy laws governing the protection of personal data. The Customer shall have created all legally necessary prerequisites (e.g. by obtaining declarations of consent) in order for the Contractor to be able to provide the agreed services in this respect without infringing any rights.

The Contractor processes personal data in compliance with the applicable legislation on the protection of personal data and on data security. The Contractor processes personal data to fulfil the contract. For additional processing activities the Customer gives the Contractor its consent to processing of its personal data in accordance with the Consent to Process Your Personal Data (<https://asc.siemens.at/recht>, drop-down "Data Protection" menu). The Contractor's Information on Personal Data (<https://asc.siemens.at/recht>, drop-down "Data Protection" menu) explains the way in which the Contractor handles personal data and where data subjects may lodge complaints against such data processing.

Where the Contractor acts as the Customer's processor of personal data provided by the Customer, the Data Privacy Terms available at <https://www.siemens.com/dpt> (including the technical and organizational measures described in them) apply as well as any other additional information contained in the offer or contract in connection with the processing of personal data (including authorised sub-processors) and are deemed as agreed upon between the parties.

17. Information security

The parties agree to take reasonable and appropriate technical and organisational measures (e.g. implementation of a state-of-the-art password policy, regular screenings to identify potential vulnerabilities or malware, regular installation of the most recent security patches) to protect their information technology (IT), such as hardware, software, IT systems, networks, web-enabled applications, cloud applications used by them, joint IT interfaces, and all information and data contained therein against IT Security Incidents. "IT Security Incident" means any loss or unauthorised deletion, destruction, alteration, or disclosure of, unauthorised access to or unauthorised control of IT infrastructure, and any other unauthorised direct or indirect interference with a party's infrastructure.

For software deliveries by the Contractor, the Customer is solely responsible for the design, implementation and maintenance of a state-of-the-art security concept which protects its information technology. Such a concept includes, without limitation, the installation of updates in accordance with the Contractor's installation instructions as soon as they are available to the Customer and using the most recent product versions, following security instructions, installation of patches, and implementation of related measures.

For remote-controlled Services, the technical and organisational process of provision such remote-controlled Services by the Contractor, is set forth in the IT security concept applicable in each case and which the Customer will be provided with. The Contractor may modify such IT security concept from time to time provided that this does not jeopardise the provision of remote-controlled Services and does not and does not result in an unreasonable impairment of the Customer's security interests. A modified IT security concept will take effect 8 weeks after receipt by the Customer. Should the Services to be performed by the Contractor includes the processing of personal data provided by the Customer, Section 16 Para 3 shall apply additionally. The Customer shall ensure that any technical amendments made in connection with its objects, systems or sites

connected to the Services (including remote-controlled services) are compatible with the Contractor's IT security concept and individual security requirements of Customer. The Customer will be solely responsible for the availability and recovery of any of its data. The Contractor recommends the Customer to regularly create backup copies of all relevant data. Any party may suspend the provision of remote-controlled Services immediately in case of misuse or risks to any system or infrastructure.

Should the Contractor discover a reportable vulnerability during its regular quality checks of the software deployed at the Customer's premises, it will promptly publish it on the following ProductCERT page: [CERT Services - Services - Siemens Global Website](#). By making this publication, the Contractor fulfills its contractual obligation to provide information. The Customer agrees to regularly check the aforementioned page. The parties will coordinate the resolution of a vulnerability based on the contractual agreements or, in the absence of such agreements, address it on an individual contractual basis.

If a party learns of a potential IT Security Incident and it cannot be excluded that the security of the other party's infrastructure will or might be compromised, the affected party shall report the IT Security Incident to the other party immediately and in any case within 48 hours. The report shall describe the potential cause as well as the type and nature of the IT Security Incident and include adequate information on the effects on the other party's infrastructure to be reasonably expected, provided that a reasonable assessment of the facts and circumstances is possible at that time. If the assessment is made at a later point in time or if an assessment is changed, the other party shall again be notified accordingly. The notification shall be subject to the confidentiality provisions of Clause 15.

The party affected by an IT Security Incident shall in any case take adequate measures which are proportionate to the severity of the IT Security Incident to ward off impacts on the other party's IT infrastructure or, if this is not possible, to limit the same.

18. Liability

18.1 Extent of liability

The Contractor shall be liable for damages of up to 25% of the net contract value per damage or loss, if gross negligence on its part or on the part of its vicarious agents [as defined in Section 1313a of the Austrian Civil Code (*ABGB*)] is proven, with total liability in the case of gross negligence being limited to the total net contract value.

For recurring Services overall liability is limited to the annual fee for the agreed Services or, in the absence of an agreement on the annual fee, in any case to EUR 50,000. In those cases, the Contractor's liability per damage or loss is limited to 25% of the annual fee or, in the absence of an agreed annual fee, to EUR 12,500.

Liability for slight negligence, consequential damages, pure financial damages, indirect damages, loss of production, financing costs, costs for substitute energy, loss of energy, data or information, lost profit, damages arising from third-party claims against the Customer, savings not earned, or lost interest is excluded.

No liability of the Contractor may be deduced from statements of the Contractor which were not included in the written contract or from information contained in brochures, catalogues, or advertising material.

If contractual penalties have been agreed in the contract, any additional claims on the same ground shall be excluded.

If the Customer uses staff of the Contractor to render a Service, this shall be done at the Customer's exclusive risk and subject to exclusion of any liability on the Contractor's part. Any such use of the Contractor's staff by the Customer for work beyond the relevant agreement shall be subject to the Contractor's prior written consent and will be charged on the basis of a fee agreed in advance or, in the absence of such a fee agreement, at the billing rates applicable at the time of provision of the Service (Clause 4.2 A above).

The Contractor shall not be liable for any damage directly or indirectly suffered by the Customer due to a violation of its duties to cooperate as defined in Clause 3, in particular where the Customer provides the Contractor with inaccurate, incomplete or misleading information for the provision of Services, its own usage behaviour and/or the usage behaviour of end customers.

Unless agreed otherwise in the contract, any damages shall be excluded in the case of non-compliance with any terms of installation, implementation, or use (e.g. as contained in user manuals) of software or official approval terms.

The provisions of Clause 18 apply exhaustively to all claims of the Customer vis-à-vis the Contractor based on whatever legal ground and title and apply to any damages caused by staff, subcontractors, or suppliers of the Contractor.

18.2 Assertion of claims

All claims of the Customer must be asserted in court within 3 (three) years of provision of the Service; otherwise the claim shall become forfeited. Mandatory statutory provisions which prescribe other time limits remain unaffected.

19. Foreign trade law & export control

19.1 General compliance with export control provisions

The Customer shall comply with all applicable sanctions, embargoes and (re-) export control laws and regulations, and in any event with those of the European Union, the United States of America, and with any locally applicable jurisdiction (together "**Export Regulations**").

19.2 Checks for Goods and Services

- (a) Prior to any transaction by the Customer concerning goods (including hardware, documentation and technology) delivered by the Contractor ("**Goods**"), or works or services (including maintenance and technical support) performed by Siemens ("**Services**") with a third party, the Customer shall check and certify by appropriate measures that the Customer's use, transfer, or distribution of such Goods and Services, the brokering of contracts or the provision of other economic resources in connection with Goods or Services will not be in violation of any Export Regulations, also taking into account any prohibitions to circumvent these (e.g., by undue diversion));
- (b) the Goods and Services are not intended or provided for prohibited or unauthorized non-civilian purposes (e.g. armaments, nuclear technology, weapons, or any other usage in the field of defence and military);
- (c) the Customer has screened all direct and indirect parties involved in the receipt, use, transfer, or distribution of the Goods and Services against all applicable restricted party lists of the Export Regulations concerning trading with entities, persons and organizations listed therein; and
- (d) Goods and Services within the scope of items-related restrictions, as specified in the respective annexes to the Export Regulations, will not, unless permitted by the Export Regulations, be (i) exported, directly or indirectly (e.g., via Eurasian Economic Union (EAEU) countries), to Russia or Belarus, or (ii) resold to any third party business partner that does not take a prior commitment not to export such Goods and Services to Russia or Belarus.

19.3 non-Acceptable use of Software or Cloud services

The Customer shall not, unless permitted by the Export Regulations or respective governmental licenses or approvals

- (a) download, install, access or use the software or cloud services from or in any location prohibited by or subject to comprehensive sanctions or subject to license requirements

according to the Export Regulations;

- (b) grant access to, transfer, (re-)export (including any 'deemed (re-)exports'), or otherwise make available the software or cloud services to any entity, person, or organization identified on a restricted party list of the Export Regulations, or owned or controlled by a listed party;
- (c) use the software or cloud services for any purpose prohibited by the Export Regulations (e.g. use in connection with armaments, nuclear technology or weapons);
- (d) upload to the cloud services platform any customer content unless it is non-controlled (e.g. in the EU: AL = N; in the U.S.: ECCN = N or EAR99); or
- (e) facilitate any of the aforementioned activities by any user. The customer shall provide all users with all information necessary to ensure compliance with the Export Regulations.

19.4 Semiconductor development

The Customer will not, without advance written authorization from the Contractor, use Goods, Services, software and/or cloud services for the development or production of integrated circuits at any advanced semiconductor fabrication facility located in the People's Republic of China and further restricted locations meeting the criteria specified in the U.S. Export Administration Regulations, 15 C.F.R. 744.23.

19.5 Information

Upon request by the Contractor, the Customer shall promptly provide the Contractor with all information pertaining to users, the intended use, and the location of use, or the final destination (in the case of hardware, documentation and technology) of the Goods, Services, software and/or cloud services. The Customer will notify the Contractor prior to the Customer disclosing any information to the Contractor that is defence-related or requires controlled or special data handling pursuant to applicable government regulations and will use the disclosure tools and methods specified by the Contractor.

19.6 No Re-Export to Russia and Belarus

Instead of paragraph 19.2d) this entire paragraph 19.6 shall apply to customers based in a country outside the European Union with the exception of partner countries listed in Annex VIII to the Regulation (EU) No 833/2014 (<https://eur-lex.europa.eu/legal-content/DE/ALL/?uri=CELEX%3A32014R0833>).

- (a) The Customer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or Belarus or for use in the Russian Federation or Belarus any goods supplied by the Contractor under or in connection with the contract (including, but not limited to, hardware, software, technology and corresponding documentation) ("Goods").
- (b) The Customer shall undertake its best efforts to ensure that the purpose of paragraph 19.6a) is not frustrated by any third parties further down the commercial chain, including by possible resellers.
- (c) The Customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of paragraph 19.6a).
- (d) Any violation of paragraphs 19.6a), 19.6b) or 19.6c) shall constitute a material breach of an essential element of the contract, and the Contractor shall be entitled to seek appropriate remedies, including, but not limited to (i) request a plan to remedy the infringement; (ii) claim penalties in the amount of the price of the re-exported Goods or 5% of the contractual value whichever is higher; (iii) suspend any of its business relationships with the Customer and/or any affiliate of the

Customer, until the breach of paragraph 19.6a) is remedied; and/or (iv) terminate the contract.

- (e) The Customer shall immediately inform the Contractor about any problems in applying paragraphs 19.6a), 19.6b) or 19.6c), including any relevant activities by third parties that could frustrate the purpose of paragraph 19.6a). The Customer shall make available to the Contractor information concerning compliance with the obligations under paragraphs 19.6a), 19.6b) and 19.6c) within two weeks of the simple request of such information.

19.7 Indemnification

The Customer will indemnify and hold harmless the Contractor, its Affiliates, subcontractors, and their representatives against any claims, damages, fines, and costs (including attorney's fees and expenses) relating in any way to the Customer's noncompliance with this Section 19, including the Customer's and its users' and third party business partners' violation or alleged violation of any Export Regulations and the Customer will compensate Siemens for all losses and expenses resulting thereof.

19.8 Reservation Clause

The Contractor shall not be obligated to fulfill the contract if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions. The Customer acknowledges that the Contractor may be obliged under the Export Regulations to limit or suspend access by the Customer and/or users to the software and/or cloud services.

20. Termination

In the absence of mandatory statutory grounds for termination, the parties may terminate the contract only for the reasons listed below and by giving written notice. Any right of rescission is excluded. Notice of termination according to Clauses 20.1 to 20.3 may also be given with respect to an outstanding part of the Delivery or Service.

20.1 Mutual reasons for termination

Either party is entitled to terminate this contract with immediate effect if the other party's payments are delayed or if that party becomes overindebted, insolvent or unable to pay or gives the impression of an imminent insolvency due to non-observance of contractual payments under other contracts between the parties, if a petition for insolvency is filed which is not obviously unfounded, if a decision on the opening of bankruptcy proceedings is issued or if it reaches an arrangement with its creditors or if its business is continued under the supervision of an insolvency administrator, trustee or managing director for the benefit of its creditors or is liquidated.

Either party shall be entitled to terminate this contract by giving 14 days' notice if the contractual duties are suspended for more than 60 days.

20.2 Termination by the Customer

Unless regulated otherwise in this contract, the Customer may terminate the contract only in the circumstances listed below and by giving 14 days' notice to the Contractor:

- (a) in the case of a grossly negligent delay of the Contractor with respect to the main performance duty, if a maximum amount of liquidated damages are payable and the Contractor was granted an reasonable additional delivery or performance period has expired and the Contractor has not promised to pay additional liquidated damages beyond the cap fixed for continued default, or
- (b) in the case of material breach of contract by the Contractor which has not been remedied within a reasonable period upon

receipt of a written notice of the breach from the Customer.

Termination by the Customer does not affect that part of the Delivery which was delivered or performed in accordance with the contract before termination. The same applies to preliminary work rendered, such as ordering materials, and preparatory work, such as engineering hours. Even in the case of termination of the contract pursuant to Clause 20 the Customer shall continue to be liable to pay the Contractor for all parts delivered before notice of termination was given. The Customer will be entitled to compensation for reasonable costs incurred in excess of the contract price if it instructs a third party to effect the deliveries upon prior written notice to the Contractor. The limitations of liability defined in Clause 18 shall also apply in the case of termination.

20.3 Termination by the Contractor

Notwithstanding any other claims or rights, the Contractor shall be entitled to terminate the contract if

- (a) the Customer comes under the direct or indirect control of a competitor of the Contractor, or
- (b) the Customer has materially breached the contract and failed to remedy the same within a reasonable period upon receipt of a written notification of the breach by the Contractor or is in delay with paying or furnishing collateral as required under this contract for more than 60 days.

In such a case of termination of the contract by the Contractor, the Contractor shall be entitled to full remuneration less the expenses and costs saved due to early termination of the contract, and to damages and reimbursement of frustrated expenses incurred by the Contractor due to early termination.

21. Dispute resolution

21.1 Negotiations

The parties will endeavour to settle any disputes that may arise out of or in connection with the contract amicably by agreement. Upon request of a party each side will delegate a representative of the senior management to participate in the negotiations. Each party may declare negotiations terminated by written notice to the other party at any time.

The regulations of this paragraph and the following paragraphs do not limit the parties' right to resort to the competent courts of law or to arbitration for interim relief.

21.2 Place of jurisdiction

The court in the circuit of District Court Vienna Innere Stadt [Bezirksgericht Innere Stadt Wien] having jurisdiction over the subject matter shall have exclusive jurisdiction over all disputes arising out of or in connection with this contract which are not resolved by negotiations as defined in Clause 21.1, including disputes over its existence or non-existence or termination of or subsequent amendments to the contract.

22. Governing law

These Terms and Conditions of Delivery, including its other agreements, addenda, enclosures, and annexes related to the contract concluded shall be governed by Austrian law; its conflict of laws rules shall be excluded.

Applicability of the UN Convention on Contracts for the International Sale of Goods shall be excluded.

23. Final provisions

23.1 Written form

The contract, any amendments and/or supplements to the same (including any amendments to the following form requirements), its termination and any (other) unilateral declarations of intent under or in connection with the contract must be executed in written form as

defined in Section 886 ABGB. The written form according to the contract is also fulfilled by (i) an advanced electronic signature as defined in Article 26 of Regulation (EU) No. 910/2014 of 23 July 2014 (eIDAS Regulation) using a software tool for electronic signatures, (ii) a simple electronic signature as defined in Article 3 No. 10 eIDAS Regulation using a software tool for electronic signatures with at least 2-factor authentication, (iii) a scan of the hand-signed original sent by email, or (iv) compliance with an existing EDI agreement. Offer letters, orders and order confirmations may also be generated without a signature in an electronic IT-system under reference to an offer- or order number.

For any other declarations, notices and communication under the contract not covered by paragraph (1), the written form according to the contract is also - in addition to the forms mentioned in paragraph (1) - met by email or (any other) simple electronic signature according to Art. 3 Nr. 10 eIDAS-Regulation using a software tool for electronic signatures, unless expressly provided otherwise in the contract for specific cases.

23.2 Severability clause

In the case of ineffectiveness of any provisions the remaining provisions shall remain binding. The Contractor and the Customer undertake to replace the ineffective provision by agreeing on an effective regulation which comes as close as possible to the ineffective provision.
