

Terms and Conditions of Delivery

of Siemens Aktiengesellschaft Österreich, Smart Infrastructure Regional Solutions Europe (Revised in February 2023)

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 or places a purchase order on the terms and conditions stated therein 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 defined in Clause 23.1 and not later than 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 may initially include all approvals, permits and notifications, funding commitments, official permits and commissioning, and certifications by third parties.

This may also include physical access, technical preparations and the bringing about of technical conditions (preliminary work of other craftsmen, data preparation, interface specifications), clearing of the construction site, completion and inspection of its own preliminary work and that of other skilled 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 third parties instructed by it 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 with 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, in addition, 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 by means of the same, and
- (d) promptly installing new versions and updates made available to it.

The Contractor provides the specifications of standard software. For custom software ordered by the Customer specifications shall be agreed between the Contractor and the Customer in writing, on the basis of 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 invoice may be issued (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 for which the Contractor is not responsible 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 flat rates, 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 from time to time plus the kilometre allowance, i.e. the allowance to which they are entitled under tax law applicable at the time of driving for kilometres driven. For travel times after the normal working time the surcharge applicable from time to time 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 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 that 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) must 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.

For performance of the contract, group companies 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 Taking Delivery

Unless agreed otherwise, goods will be delivered according to the rules for DAP destination Austria as per the INCOTERMS® 2020. If explicit taking of delivery by the Customer has been agreed, goods shall be deemed taken delivery of on the 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 through no 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 be deemed acceptance in any case.

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 notifies no 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 logistics chain, the outbreak and/or spreading of diseases on a large scale, epidemics or pandemics, and actions or omissions by public authorities (such as failure to issue an export permit), including actions occurring even though submissions were filed in compliance with formal requirements and in time.

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

If due to Force Majeure either party is unable to fulfil its contractual obligations or is only able to fulfil them to a limited extent, all consequences of default will be suspended and periods of 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 impediment caused by Force Majeure continues for more than three months, either party will be entitled to terminate the contract with respect to parts of the contract that have not been fulfilled or commenced yet. Upon the request of either party the respective other party will, after expiry of that period, state whether it wishes to 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 order, one third of the price will be invoiced after half 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 overdraft interest charged by the bank, evidence of which is provided from time to time, and 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 advise 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 for the time being) 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 compromising the functionality that existed at the time of delivery and/or acceptance of the Service.

Warranty will start 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 constitutes no repair of defects, and

bearing of the related costs shall be agreed separately. There shall be no duty 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 details, drawings, models or other specifications of the Customer, the Contractor's liability will be limited to performance on the agreed terms and conditions.

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 in its business. 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 caused by a layout or assembly, insufficient configuration, non-observance of installation requirements or terms of use, excessive use of parts, negligent or incorrect treatment or use or operation for which the Contractor is not responsible. 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 will assume no 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 it 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 meet all requirements of these terms and conditions at all times.

The Customer is prohibited from editing the information, documents, software, products and services or other material (text, graphics, logos, button icons, images, audio clips, data, photos, videos, fonts or audio recordings) (hereinafter together referred to as "**Material**") made available in this connection or otherwise or to integrate them with its own services.

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

In connection with the use of Web-based Services the Contractor may receive or record data of the Customer or third-party information (such as system-specific data, equipment features, performance parameters, object names, other purely technical details or parameters or other content) (in this Clause hereinafter referred to as "**Content**").

The Customer grants the Contractor an exclusive, transferable and sublicensable, worldwide, free-of-charge, unlimited and irrevocable right to use the Content in order to provide Web-based Services for the Customer and to manufacture works derived therefrom or aggregated data which may be merged with the Content, data of other customers and data from other sources (e.g. comparative data sets, statistical analyses, reports and related services (together "**Siemens Data**")). The Contractor may use **Siemens Data** without any restriction.

Should the Customer store data manually in connection with Web-based Services, the Customer will be 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 beforehand to allow 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. The Customer represents that it has obtained consents from third parties that may be required, so that the Contractor will be able to use the Content to the extent stated above. Unless expressly agreed otherwise, the Contractor is not responsible or liable for any erasure, rectification, destruction, loss or non-storage of or damage to Content.

The Contractor retains copies of the information received and findings made during the provision of the Services. The Contractor and third parties commissioned by it have an unrestricted, unlimited, and irrevocable right to and a permission of anonymised use of the information received and findings made in connection with provision of the Services, including for purposes other than the contractual purposes, unless such use concerns process know-how which the Customer has made available to the Contractor during provision of the Services.

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 term or is limited to the useful life of the hardware that may have been 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 the documents made available or demonstrably destroy the same. This also applies to modified software or software combined with other programs.

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

If the Customer fails to fulfil its obligations under Clause 13.1, the Contractor will 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 damage (e.g. idle times) suffered by the Contractor due to non-fulfilment of those 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 in the course of execution of the contract, exclusively remain the Contractor's 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 accept 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.

For that purpose, the parties will take precautions equal to those used by them to protect their own Confidential Information and in any case at least reasonable precautions. The parties may use Confidential Information they receive only in connection with performance of the contract and may make it accessible only to staff, staff of its affiliates, representatives or contractors who need it for that purpose and who were put under a similar obligation to maintain confidentiality.

"Confidential Information" means information marked or described as confidential at the time of disclosure or the confidential nature of which is obvious to an informed person (such as, in particular, offer and project documents). It does not include information which (i) is in the public domain or comes into the public domain with no violation of this provision, (ii) becomes known to a party otherwise with no violation of this obligation to maintain confidentiality, unless the party has reason to assume that such information is subject to an obligation to maintain confidentiality, (iii) has been in the possession of a party with no obligation to maintain confidentiality before its disclosure, (iv) has been developed by a party independently without using 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

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.

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 up-to-date 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 erasure, 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 solely the Customer is 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.

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 party concerned 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 reasonably to be 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 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 proved, 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 is limited to 25% of the annual fee or, in the absence of an agreed annual fee, to EUR 12,500 per damage or loss.

Liability for slight negligence, consequential damages, mere pecuniary 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 also apply to any damage caused by staff, subcontractors, or suppliers of the Contractor.

18.2 Assertion of claims

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 provisions of the law on sanctions, embargoes, and control of (re-)exports, and in any case with those of the European Union, the United States of America, and with any applicable local jurisdiction (together "Export Law").

19.2 Checks regarding Deliveries and Services

Prior to any transaction with third parties regarding Delivery of goods (including hardware, documentation, and technology) and/or provision of Services (including maintenance and technical support) by the Contractor, the Customer will check and take appropriate measures to ensure that

- (a) Export Law will not be violated by the use, transfer or distribution of such goods or Services by the Customer, by soliciting contracts or providing other business resources in connection with the goods or Services, even when considering anti-circumvention legislation, if any, (e.g. by inadmissible rerouting);
- (b) goods or Services are not intended or made available for any kind of non-civil use that is prohibited or subject to approval (arms, nuclear technology, weapons or any other use in terms of defence/military technology);
- (c) it has checked all parties directly or indirectly involved in the receipt, use, transfer or distribution of the goods or Services against all applicable (sanctions) lists of Export Law as regards business transactions with the entities, persons or organisations included in such lists, and
- (d) goods or Services subject to commodity-specific restrictions as specified in the relevant Export-Law annexes will not be illegally (i) exported directly or indirectly (e.g. through countries of the Eurasian Economic Union (EAEU)) to Russia or Belarus, or (ii) resold to a third business partner who has not agreed in advance to refrain from exporting those goods or Services to Russia or Belarus.

19.3 Unauthorised use of software or cloud services

Unless permitted under Export Law or by official licences or approvals to this effect, the Customer shall not

- (a) download, install, access or use the software or cloud services from or at a location from or at which access is prohibited or restricted due to comprehensive sanctioning or subject to approval under Export Law;
- (b) grant business entities, persons or organisations that are included in a (sanctions) list under Export Law or owned or controlled by a listed party access to software or cloud services, transfer or (re-)export (including so-called deemed (re-)exports) or make the same available otherwise;
- (c) use the software or cloud services for any purpose prohibited under Export Law (e.g. in combination with armaments, nuclear technology or weapons);
- (d) upload customer content to the cloud services platform, unless they are non-controlled (e.g. EU: AL = N; USA: ECCN = N or EAR99), or
- (e) allow a user of the delivery items to carry out any of the above activities. The Customer shall provide every user with all

information necessary for compliance with Export Law.

19.4 Information

The Customer will provide the Contractor with all information on the user(s), the designated purpose and place of use and/or the final destination (of hardware, documentation, and technology) of the goods, Services, software and/or cloud services immediately upon request. The Customer will notify the Contractor in advance of any communication of defence technology information or information which requires specially controlled data protection due to applicable government regulations and use the communication channels and methods provided by the Contractor for that purpose.

19.5 Indemnification

The Customer indemnifies the Contractor, its affiliates, suppliers and their representatives against any and all claims, fines and costs (including lawyer's fees and expenses) which are in any way related to non-compliance with this Clause 19 or the (alleged) violation of Export Law by the Customer, users or their business partners and agrees to compensate the Contractor for all damage and reimburse it all costs incurred by the Contractor in this connection.

19.6 Delivery proviso

Performance of the contract by the Contractor shall be subject to the proviso that performance is not impeded due to national or international regulations of foreign trade law and that no embargoes and/or other sanctions have been imposed. The Customer acknowledges that pursuant to Export Law the Contractor may be required to restrict or block the Customer's and/or the users' access 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 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 default of the Contractor with respect to the principal performance duty if agreed maximum liquidated damages must be paid, the Contractor has been granted an additional reasonable grace period for effecting the Deliveries and the 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 after

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

Termination by the Customer does not concern 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 will 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 exceeding the contract price if it instructs a third party to effect the deliveries upon written announcement. 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 gets under the direct or indirect control of a competitor of the Contractor, or
- (b) the Customer has committed a material breach of contract and failed to remedy the same within a reasonable period of receipt of a written notification of the breach by the Contractor or is late in paying or furnishing collateral as required under this contract for more than 60 days.

In the case of such a 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 means of an agreement. At the request of a party each side will delegate a representative of the senior management to attend the negotiations. Each party may declare those negotiations terminated by written notice to the other party at any time.

The regulations of this paragraph and the following paragraphs constitute no restriction of 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 and any modifications of and/or amendments to the same (including a modification of the formal requirements stated below), its termination and all (other) unilateral declarations of will provided for in the contract or related to the same shall require written

form as defined in Section 886 ABGB. Written form shall be observed by (i) an advanced electronic signature as defined in Article 26 of Regulation (EU) No. 910/2014 of 23 July 2014 using a software solution for electronic signatures, (ii) a simple electronic signature as defined in Article 3 No. 10 of Regulation (EU) No. 910/2014 using a software solution for electronic signatures with at least 2-factor authentication, (iii) a scan of the personally signed original transmitted by email, or (iv) complying with a valid EDI contract.

For communicating electronic offers and acceptance of the same, purchase orders and acknowledgements of (purchase) orders and for other statements or communications under the contract not covered by paragraph (1) email messages or a (another) simple electronic signature as defined by Article 3 No. 10 of Regulation (EU) No. 910/2014 using a software solution for electronic signatures shall suffice, 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.
