

Conditions for Supply of Training Services by Siemens

1. Definitions

In these Conditions, unless otherwise indicated by the context: **Booking Form** means the booking form for the Services (in the form prescribed by Siemens) to be completed and submitted to Siemens by the Customer.

Business Day means Monday to Friday (inclusive) excluding public holidays in the state or territory in which the Services are being provided.

Contract means the agreement between the Parties consisting of Siemens' Offer, these Conditions, the Booking Form and the Customer's purchase order.

Conditions means these conditions for the supply of training services which form part of the Offer in which they are referred to or to which they are attached.

Confidential Information means all information (in any form) of or about Siemens which:

- (a) is by its nature confidential;
- (b) is designated to be confidential; or
- (c) the Customer knows or ought reasonably to know is confidential.

Contract Price means the amount payable by the Customer to Siemens for the Services as specified in the Contract as may be varied in accordance with the Contract.

Customer means the company, firm or persons for whom work under the Contract is performed and shall include executors, administrators, successors and permitted assigns.

GST has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (as amended).

Intellectual Property Rights means all intellectual property and industrial rights of any description including without limitation all rights conferred by statute, common law or equity (whether or not registered) in relation to inventions (including patents), trademarks, designs, copyright, circuit layout rights, trade secrets, know-how and confidential information and all other rights of a proprietary nature created as a result of intellectual activity in the industrial, scientific, literary and artistic fields;

Offer means the offer by Siemens to provide the Services to the Customer which includes any special conditions contained in it.

Parties means Siemens and the Customer and Party means either one of them.

Personnel of a Party means that Party's officers, employees, contractors and agents.

Services means the training services to be provided by Siemens under the Contract and includes all Variations to those services.

Siemens means Siemens Ltd., ABN 98 004 347 880 or its related body corporate (as that term is defined in section 50 of the Corporations Act 2001) that submits the Offer, and its successors and assigns.

Taxes means all taxes including without limitation sales taxes, excise duties, stamp duties, customs duties, GST and other government charges, imposts and levies.

Variation means any change (including an increase, decrease or omission) to the Services or any change to the character or quality of the Services.

2. Validity of Offer, Precedence, Additional Information & Separable Portions

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

3. Provision of Services and Payment of Contract Price

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

- 3.4 If the Customer does not pay any amount due to Siemens, Siemens may, in addition to any other rights it may have, charge interest on the overdue amount at the rate of 3% per annum in excess of the interest rate for the time being prescribed by the Westpac Indicator Lending Rate for Overdrafts calculated from the date of invoice to the actual date of full and final payment. Any payment by the Customer shall be credited first against any interest so accrued and the balance of payment (if any) shall be applied in reduction of the outstanding balance of the Contract Price. If payment due to Siemens is delayed, Siemens may suspend its supply of the Services.
- 3.5 If Siemens is requested by the Customer to provide any services in addition to the Services, the Customer shall pay to Siemens an amount to be agreed between the Parties for those additional services. All such additional services provided by Siemens will otherwise be treated as Services for the purposes of the Contract.
- 3.6 The Contract Price is exclusive of Taxes. In addition to the payment of the Contract Price, the Customer shall pay to Siemens on demand the amount of all applicable Taxes payable in respect of the supply of the Services.
- 3.7 If after the date of the Offer, the cost to Siemens of performing the Services is varied by reason of the making or amendment of any law, order, regulation or by-law having the force of law, the amount of such variation shall be added to or deducted from the Contract Price.
- 3.8 If the Customer wishes to cancel attendance by a participant at one or more of the training courses set out in the Booking Form, the following cancellation policy applies:
 - (a) the cancellation must be communicated to Siemens in writing prior to the commencement of the scheduled training Services;
 - (b) if the cancellation is received by Siemens at least 30 days prior to the scheduled commencement date of the training course, a fee of \$250 shall be payable for the cancelled training Services; and
 - (c) if the cancellation is received by Siemens less than 30 days prior to the scheduled commencement date of the training course, the Customer shall pay Siemens an amount equal to 25 per cent of the Contract Price for such cancelled training Services.
- 3.9 Siemens reserves the right to cancel or reschedule training courses, and to change trainers or revise course content and materials at any time. Siemens will notify the Customer as soon as practicable of any such cancellation or rescheduling. If the Customer has pre-paid any Contract Price in respect of such cancelled training Services, Siemens shall provide a full refund.
- 4. **Working Hours**
Unless otherwise agreed in writing between the Parties, Siemens shall provide the Services during Siemens' normal working hours. Normal working hours shall be governed by the relevant Award in force from time to time for the particular location where Siemens' Personnel are engaged. All Services provided outside of normal working hours shall be regarded as additional services for the purposes of clause 3.5.
- 5. **Variations**
5.1 Either Party may request a Variation to the Services prior to the commencement of those Services. Siemens may agree to perform a Variation requested by the Customer, where such Variation is reasonable and within the scope of work contemplated by the Contract.
5.2 The Contract Price specified by Siemens in its Offer is based upon the scope of work specified in the Offer. If the Customer requests a Variation, Siemens may adjust the Contract Price by a reasonable amount to take into account extra costs incurred by Siemens in connection with the Variation.
- 6. **Confidentiality and Intellectual Property**
6.1 All Confidential Information which the Customer has access to must be maintained in strict secrecy and confidence by the Customer. The Customer may only use the Confidential Information for the purposes of the Contract and except to the extent required by law, the Customer shall not disclose that Confidential Information to any third party without the prior written consent of Siemens.
6.2 Ownership of all Intellectual Property Rights developed or created by Siemens in connection with the Services (including without limitation any training materials, sketches, designs, reports, plans, drawings, specifications, samples, models, patterns, photographs, graphics, logos, artworks, documents or records) shall at all times remain vested in Siemens or shall become vested in Siemens upon creation. The Customer shall promptly execute, at the request of Siemens, all documents and do all such other acts as may be necessary to give effect to this clause.
- 7. **Obligations of Customer to enable Performance of Contract**
7.1 If the Services (or any of them) are to be provided at the Customer's premises:
 - (a) the Customer shall promptly answer all queries and provide to Siemens all information and documents that Siemens deems necessary to enable Siemens to provide the Services. The Customer shall ensure that all information provided to Siemens for the purposes of the Contract is accurate and complete
 - (b) the Customer shall obtain and provide any approvals, licences or permits that are necessary to enable Siemens to supply the Services; and

- (c) the Customer shall provide Siemens with access to the Customer's premises, facilities and such items of plant and equipment as necessary to enable Siemens to supply the Services.
- 7.2 If access under clause 7.1(c) is necessary, the Customer shall take all necessary measures to ensure that Siemens' Personnel are able to commence the Services immediately upon their arrival at the premises and to ensure that the Services are able to be performed in an uninterrupted manner. The Customer shall also take all measures prescribed by law that are applicable to the premises where the Services will be performed that relate to occupational health and safety and accident prevention.
- 8. Indemnity**
The Customer shall indemnify Siemens and its Personnel (the "Indemnified") against all liabilities incurred by the Indemnified arising out of any loss of or damage to property and claims by persons in respect of personal injury or death, to the extent the loss, damage, injury or death was caused by an act or omission of the Customer or its Personnel.
- 9. Liability**
9.1 To the extent permitted by law all implied conditions and warranties are excluded from the Contract.
9.2 The Contract does not seek to exclude the operation of the *Competition and Consumer Act 2010* or any other law of the Commonwealth, a State or Territory to the extent that the provisions of that legislation may not be excluded by express agreement.
9.3 Except to the extent that liability cannot be legally limited or excluded and whether in contract, tort, negligence, under an indemnity, under statute, in equity or otherwise:
(a) Siemens' liability arising out of or in connection with the Contract shall be limited, at Siemens' option, to the re-supply of the Services or to the payment of the cost of having the Services supplied again; and
(b) in no event shall Siemens be liable for indirect or consequential loss or damage, economic loss, loss of profit or revenue, loss of production or production stoppage or loss of contract.
- 10. Suspension and Termination**
10.1 Siemens may immediately suspend its performance of or terminate all or part of the Contract by notice to the Customer if:
(a) the Customer breaches any term of the Contract and fails to remedy that breach within 14 days of receipt of the notice requesting the Customer to do so; or
(b) the Customer
(i) is, or states that it is, or under applicable legislation is taken to be, unable to pay its debts as and when they fall due;
(ii) takes or has properly and validly instituted against it any order, action or proceeding for its winding up or dissolution or resolves to wind itself up or otherwise dissolve itself; or
(iii) has an administrator, controller, receiver, receiver and manager, liquidator, provisional liquidator or similar officer appointed over any of its assets.
10.2 If Siemens suspends or terminates the Contract under clause 10.1, payment for all Services provided by Siemens up to the date of such suspension or termination shall immediately become due and payable, despite any credit arrangements or facilities previously granted to the Customer. Siemens may also retain any security given and monies paid by the Customer and apply this against the assessed loss and damages incurred by Siemens in performance of the Contract.
10.3 Any action taken by Siemens under this clause shall not invalidate the Contract or prejudice any of the rights, powers and remedies of Siemens, whether under the Contract or otherwise.
- 11. Dispute Resolution**
11.1 If any dispute or difference occurs between the Parties arising out of or in connection with the Contract ("Dispute"), either Party may give written notice of that Dispute to the other Party, giving details of the subject-matter of the Dispute ("Notice of Dispute").
11.2 Upon the giving of a Notice of Dispute, the following shall apply:
(a) the Dispute shall be submitted for negotiation by the respective Chief Executive Officers of the Parties or their respective nominees
(b) if within 21 days of the giving of the Notice of Dispute, the Dispute has not been resolved, the Dispute may be referred by either Party to arbitration in accordance with the Rules for the conduct of commercial arbitrations of the Institute of Arbitrators & Mediators Australia by one arbitrator who shall be a lawyer and who shall give his or her decision in writing and based on legal substance chosen by the Parties or, if they cannot agree within 42 days of the giving of the Notice of Dispute, by the Chairman for the time being of the Institute of Arbitrators & Mediators Australia.
(c) the award of such arbitration shall be final and binding on both Parties in accordance with legislation applying to Commercial Arbitration and judgement thereon may be entered in any court having jurisdiction
- (d) a reference to arbitration under this clause shall not relieve either Party of any other obligations under the Contract, including, if and so far as is reasonably practicable, the obligation to take steps necessary during arbitration proceedings to ensure that the progress of the Contract will be maintained.
(e) the seat of Arbitration shall be Melbourne, Victoria. The language to be used in the arbitration shall be English.
- 12. Non-Solicitation**
12.1 The Customer shall not during the term of the Contract (and for a period of 12 months after the provision of all of the Services under the Contract) directly or indirectly solicit or entice away (or attempt to solicit or entice away) for employment any person who is engaged by Siemens to perform the Services.
12.2 The Customer shall indemnify Siemens upon demand against all loss, costs and expenses of any nature incurred by Siemens arising out of or in connection with a breach of this clause (including all costs incurred by Siemens to replace such person).
- 13. General**
13.1 **Waiver** - A failure or delay in exercising any right, power or remedy by a Party does not operate as a waiver. A single or partial exercise of a waiver does not prevent any other or a further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting the waiver unless made in writing.
13.2 **Governing Law** - The Contract shall be governed by and construed in accordance with the laws of the State of Victoria and the Parties irrevocably submit to the non-exclusive jurisdiction of the courts of that State and to the appeal courts from them.
13.3 **Survival** - All provisions of the Contract which are capable of having effect after the termination or expiry of the Contract shall remain in full force and effect despite any termination or expiry of the Contract.
13.4 **Notices**
(a) All notices given by a Party pursuant to the Contract must be in writing and must be delivered by prepaid post, by hand or by facsimile to the last known address of the other Party.
(b) A notice shall be deemed to be duly given:
(i) in the case of delivery by hand, when delivered;
(ii) in the case of delivery by post, 2 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country); or
(iii) in the case of facsimile, on receipt by the sender of a transmission report from the despatching machine showing the transmission has been made to the correct fax machine number without error
(c) If a notice is deemed to be given under clause 13.4 on a day which is not a Business Day in the place which the notice is received, or is deemed to be received after 4.00 pm in that place, the notice will be deemed to be given on the next Business Day in that place.
13.5 **Severance** - If any provision of the Contract is held to be invalid or unenforceable by a court of law or other competent authority, that provision shall be severed and all other provisions of the Contract shall continue in full force and effect.
13.6 **Amendment** - No amendment or variation of the Contract shall be valid or binding unless made in writing and signed by both Parties.
13.7 **Business Day** - If a payment or other act is required to be made or done under the Contract on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.
13.8 **Entire Agreement** - The Contract contains the entire agreement between the Parties on its subject matter. The Parties agree that all other understandings, agreements, documents, representations and communications whether express or implied in any way relating to the Contract are void and have no effect.
13.8 **Interpretation** - In these Conditions:
(a) a reference to the Contract or any other document includes any variation or replacement of either of them;
(b) the use of the word "includes" shall be interpreted to mean "includes without limitation";
(c) headings are for ease of reference and do not affect interpretation;
(d) the singular includes the plural and vice versa;
(e) a reference to "\$" or "dollars" is a reference to Australian dollars;
(f) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase shall have corresponding meanings; and
(g) a reference to all or any part of a law, statute, rule, regulation or ordinance includes that statute, rule, regulation or ordinance as amended, consolidated, re-enacted or replaced from time to time