

## 1. Entry into Agreement, Deliverable

- 1.1 These General Delivery Conditions for Customer-specific Systems shall govern the contract relations between Customer and Siemens Schweiz AG, for the delivery of systems (products, together with further services), which Siemens performs at the premises of Customer or by remotely accessing Customer's IT systems. They shall also apply in the event that Customer indirectly accesses its own systems via the Siemens systems.
- 1.2 Offers that do not include a deadline for acceptance (binding period) are not binding.
- 1.3 The Agreement has been formed upon dispatch of the order confirmation and the annexes to the same by Siemens. If a separate specifications document is not attached to the Agreement, the goods and services (collectively called the "deliverable") shall be provided as stated in the technical specifications of Siemens and the rules and regulations in force in Switzerland on the effective date of the Agreement.
- 1.4 Unless otherwise agreed in writing, Customer acknowledges upon entry into the Agreement that the present Conditions of Delivery are binding. Any conditions of Customer are not applicable.
- 1.5 Agreements, amendments to the Agreement, and other declarations of the Parties having legal significance must be made in writing in order to be valid. This writing requirement may only be waived by means of a written document. Offers and confirmations of orders by Siemens may also be electronically signed with a Siemens Certificate.
- 1.6 Siemens has the right to engage subcontractors for the purpose of performing certain work and/or manufacturing particular parts of the deliverable.

## 2. Software

- 2.1 Siemens software is licensed, and not sold, under the end-user licence agreement (EULA) individually made or issued in conjunction with the software. The software is issued in object code without source codes. The licence only grants the right to use the software in connection with the deliverable. It may only be transferred together with the deliverable. Customer does not have the right to modify or reverse engineer the software.
  - 2.2 Any commercially available, standard software to be supplied by Siemens is exclusively subject to the applicable delivery or licence conditions, as the case may be, of the respective manufacturer.
  - 2.3 Insofar as the software contains Open Source Software ("OSS"), the OSS is listed in the menu under the heading "Licence Information" or in written documentation pertaining to the software. If the OSS licence conditions so require, Siemens shall issue the OSS source codes upon payment of shipping and handling costs.
- ## 3. Prices
- 3.1 All prices are stated in Swiss francs and are based on the Delivery Conditions described herein and on Customer's circumstances notified to Siemens at the time of pricing. All ancillary costs not expressly included in the price, such as assembly, transport, customs duties, insurance, and export, transit, import, and other permits, as well as authentications shall be borne by Customer. Furthermore, any and all support services, as well as travel and accommodation expenses for personnel, are not included in the price. These costs shall be billed at the standard rates of Siemens.
  - 3.2 In the event of a change in the circumstances on which the pricing is based, including but not limited to parities between currencies or public/official taxes, charges, fees and customs duties, etc. occurring between the time of the offer and the agreed delivery date, Siemens has the right to adjust prices and conditions to the altered circumstances. In the event of changes in wage rates or prices of materials, the prices shall be adjusted in accordance with the sliding price formula of SWISSMEM.
  - 3.3 If circumstances attributable to Customer result in additional expenses, Siemens shall promptly notify Customer. The Parties shall mutually arrange a reasonable adjustment to the agreed price prior to implementation.

## 4. Payment Terms

- 4.1 Unless otherwise agreed, invoices from Siemens are due immediately and must be paid no later than on the 30<sup>th</sup> day after the invoice date, without discounts or other deductions. Payment is deemed to have been made if the total amount due has been credited, free of charge, to an account identified on the invoice in Swiss francs and is fully available to Siemens. Customer is not permitted to offset any counterclaims against the payment.
- 4.2 Payment periods must be observed even if transport, delivery,

assembly, commissioning, or acceptance of the goods or services are delayed or precluded for reasons not attributable to Siemens or if non-significant parts are missing or subsequent work that does not preclude use of the deliverable proves necessary.

- 4.3 If Customer is in arrears on a payment for any reason whatsoever or if, because of circumstances arising after the Parties entered into the Agreement, Siemens seriously doubts that it will receive the payments in full or on time, Siemens has the right, without waiving any of its other rights, to discontinue delivery until such time as it receives securities or prepayments.
- 4.4 If Customer fails to comply with the agreed payment periods, it shall be in default, no reminder being required, and it must pay default interest of 8% *per annum* as of the 31<sup>st</sup> day after the invoice date.

## 5. Reservation of Title

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

## 6. Performance of contract by remote access

- 6.1 To the extent the deliverable in question is susceptible to remote delivery, Siemens may also perform the delivery by remotely accessing Customer's systems and databases. Customer hereby grants Siemens the authorisations required for this purpose and shall, at its own cost and expense, inform Siemens and its staff regarding its IT processes.
- 6.2 It is the assumption of Siemens that Customer maintains an IT security scheme comporting with the state of the art, and shall ensure that the appropriate security measures (e.g. system security updates and anti-virus programs) are taken and always kept up-to-date.
- 6.3 In the event that licences are needed on the side of Customer for Siemens's remote access, Customer shall procure such licences at its own cost and expense and shall maintain them in force throughout the entire period of the delivery.
- 6.4 In order to undertake the remote access, Siemens shall be entitled to access Customer systems and databases relevant to its work.
- 6.5 Siemens may copy data from Customer's systems to its own systems if this is indispensable in order to perform troubleshooting analysis or rectify faults.

## 7. Delivery Period

- 7.1 The delivery period begins after issuance of the order confirmation and when all contractual, technical, and official formalities, such as import, export, transit, and payment permits have been obtained or fulfilled, as the case may be, and the deliverable has been determined. The delivery period shall be deemed to have been observed if the deliverable has been delivered or assembled or installed, as the case may be, at the agreed place by the expiry of this period and if the acceptance can be conducted immediately. Partial deliveries are permitted.
- 7.2 The delivery period shall be extended for a reasonable time:
  - if Siemens does not receive in a timely manner the information and materials it requires in order to fulfil the Agreement, or if Customer subsequently requests changes or additions;
  - if impediments arise that Siemens is unable to avert despite exercising due care, regardless of whether these impediments occur at the facility of Siemens, Customer, or a third party. Such impediments include, for example: export and import restrictions, boycott orders of national or supranational organisations, or official acts or omissions; labour conflicts and other disruptions of operations not attributable to Siemens, epidemics, natural phenomena, hacker attacks, and terrorist activities. Should such impediments occur, Siemens shall inform Customer promptly and keep it apprised of the extent and background of the impediments;
  - if Customer or third parties engaged by it default on performing work or on fulfilling their contractual duties, or if Customer fails to comply with the payment terms;
  - If Customer has not put the necessary preconditions in place for Siemens's remote access or if they fail temporarily or entirely;
  - If the remote access is misused or if risks to the system in question are present.

- 7.3 In case of delays demonstrably caused by Siemens, Customer has the right to claim compensation for losses resulting from default, provided Customer can prove that it has incurred a loss as a result. If Customer receives a substitute delivery in a timely manner, the aforementioned claim shall not apply.
- 7.4 As of the end of the second week, the compensation for losses resulting from default shall be no more than 0.5% for every full week of delay, but in total no more than 5%, calculated on the contractual price of the delayed portion of the deliverable.
- 7.5 Once the compensation for losses resulting from default has reached the maximum, Customer may grant Siemens a reasonable final grace period in writing. If Siemens fails to comply with this period for reasons attributable to Siemens, Customer has the right to decline acceptance of the late portion of the deliverable. If partial acceptance is financially unreasonable for Customer, Customer has the right to withdraw from the Agreement and to reclaim any prior payments made in exchange for return of the corresponding deliverables.
- 7.6 As regards late delivery, Customer has no rights or claims other than those expressly specified in this para. 7.
- 8. Cooperation between the Parties**
- 8.1 Siemens and Customer shall jointly strive to fulfil the Agreement and take in a timely manner all precautions necessary for purposes of fulfilling the same.
- 8.2 Customer shall make in a timely manner and free of charge properly equipped workstations and materials (including the necessary power supply) available to employees of Siemens working at Customer's facility.
- 8.3 Customer shall lend to Siemens free of charge any additional required materials, software, and/or test data on suitable data media.
- 8.4 Either party may suspend the remote access with immediate effect if such access is misused or if risks to the system in question are otherwise present.
- 9. Amendments to the Agreement**  
Where unforeseen events materially affect the content of the deliverable or the work performed by Siemens, as well as in the event that implementation becomes impossible, the Agreement shall be amended accordingly. If this is unreasonable for financial reasons, Siemens has the right to cancel the Agreement or the affected parts of the same. If Siemens wishes to cancel the Agreement, Siemens shall inform Customer after having realised the implications of the event, even if the Parties initially agreed to extend the delivery period. In the event of cancellation of the Agreement, Siemens has the right to payment of the deliverable already provided in accordance with the agreed price. Customer has no right to damages arising from such cancellation of the Agreement.
- 10. Transfer of Benefit and Risk**  
The benefit and risk shall pass to Customer upon report of its readiness to accept delivery failing this, at the beginning of the transport to the storage site. If delivery, assembly, or installation is delayed at Customer's request or for other reasons not attributable to Siemens, the risk shall pass to Customer at the date and time originally scheduled.
- 11. Acceptance (Approval)**
- 11.1 Siemens shall notify Customer that the deliverable is ready for acceptance at least five business days in advance.
- 11.2 Within one month, beginning upon notification that the deliverable is ready for acceptance, Customer and Siemens shall jointly conduct an acceptance inspection in accordance with the relevant contractual agreements.
- 11.3 Siemens shall draw up an acceptance record which shall be signed by both Siemens and Customer. The acceptance record must state whether the acceptance has taken place or been declined. Any notified defects must be individually included in the acceptance record.
- 11.4 Siemens shall correct the recorded defects as soon as possible either through repair or substitute delivery, at its option. Customer shall grant Siemens the requisite time and opportunity to correct the defects. Replaced parts must be returned to Siemens.
- 11.5 If the acceptance inspection reveals only non-significant defects that do not materially impair the agreed use, Customer must accept the deliverable.
- 11.6 If the acceptance inspection reveals defects that preclude the agreed use, Siemens shall once again notify Customer that the deliverable is ready for acceptance after correcting the same, for purposes of which Customer shall grant Siemens a reasonable grace period.
- 11.7 If defects identified during the subsequent acceptance inspection or during the warranty period cannot be corrected within a reasonable period and are so serious that the agreed use of the deliverable remains impossible, Customer has the right either to request a reasonable reduction of the agreed price, or to decline acceptance of the defective part or, if partial acceptance is unreasonable for Customer, to withdraw from the Agreement. In this case, Siemens may only be required to refund the amounts paid for the parts of the deliverable not accepted by Customer.
- 11.8 If Customer does not accept the deliverable even though there are no defects that preclude the agreed use, or if Customer declines to sign the acceptance record together with Siemens, the deliverable shall be deemed accepted upon expiry of the respective acceptance periods.
- 12. Warranty**
- 12.1 Unless otherwise agreed, the warranty period for the deliverable is 12 months. This period shall begin to run upon acceptance of the deliverable. If shipment is delayed for reasons not attributable to Siemens, the warranty period shall end no later than 18 months from the date of notification that the deliverable is ready for acceptance.
- 12.2 For substituted or repaired parts of the deliverable, the warranty period is 6 months from the date of substitution, completion of repair, or acceptance of the substituted or repaired parts, if the warranty period for the deliverable expires earlier in accordance with the foregoing paragraph. In any case, the warranty period shall end no later than 18 months from the date of notification that the deliverable is ready for acceptance.
- 12.3 The warranty shall expire prematurely if Customer or a third party makes alterations or repairs without the prior written consent of Siemens or if Customer, having identified a defect, fails to take immediately all proper measures to mitigate losses, notify Siemens of the defect and grant Siemens the opportunity to correct the same.
- 12.4 Defects identified during the warranty period must be notified to Siemens in writing immediately but within no more than five business days. Siemens shall correct the notified defects as soon as feasible either through repair or substitute delivery, at its option. Where defective parts are replaced in the process, the defective parts shall become the property of Siemens.
- 12.5 The costs of defect corrections performed at the factory shall be borne by Siemens. If a defect cannot be corrected at the factory of Siemens, the associated costs shall be borne by Customer insofar as they exceed the standard transport, personnel, travel and accommodation expenses, as well as the costs of installing and uninstalling the defective parts.
- 12.6 The only warranted qualities are those expressly designated as such in the order confirmation. The warranty is deemed to have been fulfilled if proof of the relevant quality has been provided at the time of the acceptance inspection; otherwise, the warranty applies until the expiry of the warranty period, and no longer. Unless the warranted qualities are satisfied in full, Customer shall initially have the right to correction by Siemens. Unless this correction is fully successful, Customer has the right to a reasonable reduction of the price. If the defect is so serious that it cannot be corrected within a reasonable period, and if the deliverable cannot be utilised for the agreed use, Customer has the right to decline acceptance of the defective part or, if it is unreasonable for Customer to accept a partial delivery, Customer may withdraw from the Agreement. Siemens may only be required to refund the amounts it has been paid for the parts of the deliverable affected by this withdrawal.
- 12.7 The warranty and liability of Siemens do not cover losses that have not demonstrably arisen from poor material, defective construction or faulty execution, e.g., as a result of normal wear and tear, faulty maintenance, non-compliance with operating rules, undue strain, inappropriate equipment, chemical or electrolytic effects or disturbances resulting from equipment not supplied by Siemens, construction or assembly work not performed by Siemens, or for other reasons not attributable to Siemens.
- 12.8 In the event of defective software, a prerequisite for correction of defects is that the defect must be documented in detail, where possible, and reproducible in the unaltered original version on the contractually specified reference or target hardware. Defects in the software shall be corrected initially via upgrade or update where this is possible at reasonable costs. If the defect prevents Customer from completing important, time-sensitive tasks, Siemens shall find a workaround where this is possible within a reasonable time and effort. In the event of loss of or damage to data and/or data media, the warranty

- only covers the installation of backed-up data.
- 12.9 For deliverables provided by subcontractors, as well as for standard devices originating from sub-suppliers, such as computers, printers etc., Siemens shall assign to Customer the rights vis-à-vis the subcontractors.
- 12.10 The term "defect" refers to deviations in deliverables, software and/or documentation vis-à-vis the requirements expressly agreed upon in the Agreement and the annexes to the same.
- 12.11 Customer has no rights and claims other than those expressly indicated in this para. 12 in respect of defects in materials, construction or execution, as well as in respect of the absence of warranted qualities.
- 12.12 Siemens has the right to bill to Customer the costs associated with troubleshooting if the defects notified by Customer cannot be identified or reproduced in the course of troubleshooting. If defects in any deliverable or software are attributable to fault on the part of Customer, Siemens shall correct these defects at Customer's request for a reasonable fee and on terms to be agreed upon in each case.
- 13. Other Liability**
- 13.1 Siemens shall only be liable for the correctness of the data provided by Siemens at the WAN exit point of the computer used by Siemens.
- 13.2 In the event of loss or damage to data and/or data media material, Siemens's liability to Customer shall be limited to the reinstallation of backup data.
- 13.3 Customer shall bear sole responsibility for the data access it has requested and for compliance with the provisions of law applicable in connection therewith.
- 13.4 Where Customer uses the remote access to make changes to its own system, Customer shall bear sole responsibility therefor.
- 13.5 Any claims of Customer other than those expressly specified in the Agreement and these General Delivery Conditions, regardless of the legal basis on which they are made, in particular compensation for damages that have not occurred on the deliverable itself, such as loss of production, loss of use, all claims for compensation that are not expressly specified, reduction in price, cancellation of the contract or withdrawal from the contract are excluded. Customer's rights to compensation for losses not incurred by the deliverable itself, such as loss of production, loss of use, loss of orders, lost profits, or other direct or indirect losses shall only apply if this has been expressly agreed in writing and is limited, at any rate, to a maximum of one million Swiss francs. This limitation of liability does not apply in case of gross negligence or wrongful intent or where precluded by mandatory law.
- 14. Compliance with Export Control Regulations**
- Customer acknowledges that the deliverables may be subject to Swiss and/or foreign legal rules and regulations concerning export control and, in this case, they must not be sold, rented, or otherwise transferred or utilised for other than the agreed use without an export or re-export permit, as the case may be, from the competent authority. Customer shall undertake to comply with such rules and regulations. Customer acknowledges that these rules and regulations may change and shall apply to the Agreement in the wording in force from time to time.
- 15. Confidentiality and Data Protection**
- 15.1 Siemens and Customer shall undertake to treat confidentially all documents, information, tools and software received in connection with this Agreement and not publicly available, as their own trade secrets, even after the termination of the Agreement, and to refrain from distributing them unnecessarily within their respective companies and from making them available either in whole or in part to third parties, except subcontractors.
- If, in the course of its work on the deliverable and documentation, Siemens processes personal data, Siemens shall comply with Customer's instructions and the relevant data protection laws. Siemens shall take appropriate measures to safeguard such data against unauthorised access by third parties.
- 15.2 Customer acknowledges that the data, information and documents concerning Customer may be stored inside or outside Switzerland. They may be disclosed to Siemens AG, Munich, Germany and to its affiliates for purposes of fulfilling the Agreement.
- 15.3 Where Siemens's performance of the services requires remote access to personal data, Customer shall be informed and requested to approve such access. Siemens's access to personal data shall only be undertaken after Customer has granted its approval. Until such time as the approval is given, Siemens's obligation to perform the contract shall be suspended, without this entailing any claim to compensation on the part of Customer.
- 15.4 Siemens may only use information to which it becomes privy in the course of performing the contract purposes of performing the contract, and, only in anonymised form, in order to undertake further development of its products.
- 16. Rights to the Deliverable and Documentation**
- 16.1 All hardware pertaining to the deliverable and the design thereof, as well as all associated software and documentation, are the intellectual property of Siemens or the relevant subcontractors or sub-suppliers, as the case may be, regardless of their protectability.
- 16.2 Customer receives the right to utilise the deliverable, including the software created for Customer under this Agreement, as well as the associated documentation, in accordance with the provisions of this Agreement.
- 17. Third-party Proprietary Rights and Claims**
- 17.1 Siemens shall take the steps it deems feasible and reasonable to ensure that the deliverable, insofar as it is identifiable to Siemens, does not infringe on any proprietary rights of third parties.
- 17.2 If a third party asserts legitimate claims based on proprietary rights (patents, etc.) in respect of the deliverable, Siemens shall, at its own option and expense,
- obtain a right of use from the party authorised to make dispositions as regards the affected proprietary right, or
  - alter the infringing parts, or
  - exchange the infringing parts for parts that are free of proprietary rights, or
  - take back the deliverable in exchange for a refund of the purchase price,
- all other claims being hereby excluded.
- Claims shall only be deemed legitimate if they have been acknowledged by Siemens or awarded by a final court decision.
- 17.3 Customer is required to inform Siemens immediately if a third party asserts claims against Siemens on any legal basis whatsoever. Customer may not acknowledge such claims of its own accord.
- 17.4 Customer shall support Siemens in defending against such claims and handling the dispute with the third party, in particular, in a lawsuit. In this respect, Customer shall only take action based on written instructions of Siemens. Siemens shall reimburse to Customer documented expenses incurred through the provision of such support.
- 18. Consequences of Termination of the Agreement**
- After the termination of the Agreement, the rights and duties specified in para. 14 and para. 15 shall continue to apply consistently to all results obtained in connection with the Agreement during the term of the same.
- 19. Governing Law**
- The contractual relationship shall be governed by the substantive laws of Switzerland. The UN Convention on Contracts for the International Sale of Goods (UN CISG) of 11 April 1980 shall not apply to this contractual relationship.
- 20. Venue**
- The venue for both Customer and Siemens is Zurich. However, Siemens also has the right to take legal action against Customer at the domicile of the latter.