

## Conditions of Purchase

Dated: 1st of August 2014

### 1. Order and Confirmation of Order

- 1.1 The Customer may cancel the order if the Supplier has not confirmed acceptance of the order (confirmation) in writing within two weeks of receipt.
- 1.2 Any alterations, amendments or additions to the order shall only become a part of the agreement if the Customer accepts such in writing. These general conditions apply to all contracts for equipment, materials and services and will therefore exclude any standard conditions of sale established by the Supplier. Participation in the client tendering process, through which the Supplier submits a bid, automatically implies knowledge and acceptance of these general conditions in the event that the contract is awarded or an order placed for any part of the bid. Any exception to these general conditions on the part of the Supplier shall be valid only in writing and only if accepted by the Customer, also in writing.

### 2. Rights of Use

- 2.1 The Supplier hereby grants the Customer the following non-exclusive, transferable, worldwide and perpetual rights:
  - 2.1.1 to use the deliveries and services including related documentation, to integrate them into other products and to distribute them worldwide;
  - 2.1.2 to use or allow others to use software and its related documentation (hereinafter collectively referred to as "Software") in connection with the installation, launch, testing and operation of the Software and the deliveries and services;
  - 2.1.3 to sublicense the right of use under section 2.1.2 above to affiliates (as defined by Article 42 of the Commercial Code) to other distributors and end customers;
  - 2.1.4 to license to affiliates (as defined by Article 42 of the Commercial Code) and other distributors the right to sublicense the right of use under section 2.1.2 above to end customers;
  - 2.1.5 to use the Software for integration into other products and to copy the Software, or to allow affiliates (as defined by Article 42 of the Commercial Code) or other distributors to use and copy the Software;
  - 2.1.6 to distribute, sell, hire out, lease, make ready for download or make publicly available the Software, e.g. in the context of Application Service Providing or in other contexts, and to copy the Software to the extent required, always provided that the number of licenses being used at any one time does not exceed the number of licenses purchased;
  - 2.1.7 to sublicense the right of use under section 2.1.6 above to affiliates (as defined by Article 42 of the Commercial Code) and other distributors.
- 2.2 In addition to the rights granted in section 2.1 above, the Customer, affiliates (as defined by Article 42 of the Commercial Code) and other distributors are authorized to allow end customers to transfer Software licenses.
- 2.3 All sublicenses granted by the Customer must contain appropriate protection for the intellectual property rights of the Supplier in the Software. All sublicenses must contain any contractual provisions used by the Customer to protect its own intellectual property rights.
- 2.4 The Supplier shall inform the Customer - at the latest at the time the order is confirmed - whether the products and services to be delivered contain "open source software". In the context of this provision "open source software" means any software that is provided royalty-free by the respective licensor to any user on the basis of a license or another agreement with the right to modify and/or to distribute such software. By means of example and without limitation, Open License Terms include the following licenses: the GNU General Public License (GPL), the GNU Lesser GPL (LGPL), the BSD License, the Apache License or the MIT License. Should the products and services delivered by the Supplier contain open source software, the Supplier must deliver to the Customer at the latest at the time the order is confirmed the following:
  - The source code of the relevant open source software, insofar as the applicable open source conditions require the disclosure of this source code
  - A schedule of all open source files used, indicating the relevant license and including a copy of the complete text of such license
  - A written declaration that through the intended use of the open source software neither the products of the Supplier nor the products of the Customer will be subject to a "Copyleft Effect". In the context of this provision,

"Copyleft Effect" means that the provisions of the open source license require that certain of the Supplier's products, as well as any products derived from these, may only be distributed further in accordance with the terms of the open source license e.g. only if the source code is disclosed.

Should the Supplier not indicate until after receipt of the order that its products and services contain open source software, then the Customer is entitled to cancel the order within 14 days of receipt of this information and provision of all the information contained in the above paragraph.

### 3. Term and Penalty for Breach

- 3.1 For the purposes of establishing the timeliness of delivery or rectification, the relevant point in time is the date of receipt at the place of receipt designated by the Customer, and for deliveries involving installation, commissioning or rectification services, the relevant point in time shall be the date of acceptance.
- 3.2 Where any delay in delivery or performance or rectification can be anticipated, the Customer shall be notified immediately and its decision sought.
- 3.3 If - in the event of delay - the Supplier cannot prove that he is not responsible for the delay, the Customer may charge a penalty in respect of each commenced working day of delay amounting to 0.3 % but not exceeding a total of 10 % of the total value of the contract.

In the event that the appropriate reservation of rights is not made at the time of acceptance of delivery, services or rectification, this penalty may still be claimed if the reservation of rights is made until the date of final payment. The imposition of penalties shall not preclude the Customer from requiring the Supplier to fulfill its contractual obligations nor entitlement to damages to which the Customer may be entitled as a result of any failure of the Supplier.

### 4. Transfer of Risk, Dispatch and Place of Performance, Transfer of Title

- 4.1 For deliveries involving installation, commissioning or services, the transfer of risk occurs on acceptance and for deliveries not involving installation or commissioning, the transfer of risk shall be upon receipt by the Customer at the designated place of receipt.
- 4.2 Unless otherwise agreed, the costs of delivery and packaging shall be borne by the Supplier. For pricing ex works or ex warehouse of the Supplier, transport shall in each case be at the lowest possible cost, insofar as the Customer has not requested a particular method of delivery. Any supplementary costs arising from non-conformity with the transport requirements shall be borne by the Supplier. Where the price is quoted free to the recipient, the Customer may also determine the method of transportation. Any supplementary costs arising from the need to meet the delivery deadline by way of expedited delivery shall be borne by the Supplier.
- 4.3 Each delivery shall include a packing note or delivery note with details of the contents as well as the complete order number. Notice of dispatch shall be provided immediately with the same information.
- 4.4 If the transport is performed by a carrier commissioned by the Customer, the Supplier will inform the carrier of the necessary data concerning dangerous goods in accordance with legal requirements.
- 4.5 If the Customer informs the Supplier that following the initial transport another transport with a different mode of transport is scheduled, the Supplier will also follow the relevant legal requirements concerning dangerous goods with regard to such on-going transport.
- 4.6 The Supplier shall be liable for any expenses and/or damages incurred by Customer due to any breach of the obligations under this section 4, unless Supplier is not responsible for such breach.
- 4.7 Transfer of title shall be upon delivery or acceptance by the Customer, as the case may be.

### 5. Invoices

The order number as well as the number of each individual item shall be detailed in invoices. Insofar as any such details are omitted, invoices shall not be payable. Copies of invoices shall be marked as duplicates.

### 6. Payment

- 6.1 Unless otherwise agreed, payments shall be due and payable no later than 30 days net. If payment is made within 14 days, Customer is entitled to a 3 % discount. The period

- for payment shall commence as soon as any delivery or service is completed and a correctly issued invoice is received.
- 6.2 Insofar as the Supplier is required to provide material testing, test records or quality control documents or any other documentation, such shall be a part of the requirements of the completeness of the delivery or performance. A discount shall also be allowed if the Customer sets off or withholds any payments to a reasonable extent on account of any deficiency.
- 6.3 Payment does not constitute an acknowledgement that the corresponding delivery or services were provided in accordance with the Contract.
- 7. Inspection upon receipt**
- 7.1 The Customer shall immediately upon receipt examine whether a delivery corresponds to the quantity and type of products ordered and whether there are any external recognizable transportation damage or other deficiencies.
- 7.2 Should the Customer discover any deficiency in the course of these inspections or at any later stage, it shall inform the Supplier of such deficiency.
- 7.3 In this regard, the Customer shall have no other duties to the Supplier other than the duties of inspection and notification above.
- 8. Warranty**
- 8.1 If deficiencies are identified before or during the transfer of risk or during the warranty period provided for in section 8.9 or 8.10, the Supplier must at its own expense and at the discretion of the Customer either repair the deficiency or provide reperformance of services or replacement of deliveries (= rectification). This provision also applies to deliveries subject to inspection by sample tests. The discretion of the Customer shall be exercised fairly and reasonably.
- 8.2 Should the Supplier fail to rectify (i. e. repair or replacement) any deficiency within a reasonable time period set by the Customer, the Customer is entitled to:
- cancel the contract in whole or in part without being subject to any liability for damages;
  - demand a reduction in price;
  - or undertake itself any repair at the expense of the Supplier or reperformance of services or replacement of deliveries or arrange for such to be done;
- All options outlined above are without prejudice to the Customer's entitlement to claim damages in lieu of performance.
- 8.3 The rights according to 8.2 may be exercised without further deadline if the Customer has a strong particular interest in immediate rectification in order to avoid any liability of its own for delay or for other reasons of urgency and it is not reasonable for the Customer to request the Supplier to rectify the deficiency within a reasonable time period.
- 8.4 The warranty period provided by the Supplier shall coincide with the request of the Customer's end customer. In the event that there is no specific guideline regarding guarantees requested by the Customer on behalf of the end customer, the provisions outlined at 8.8 and 8.9 shall apply.
- 8.5 Additional or other statutory rights are not affected hereby.
- 8.6 If the Supplier provides subsequent performance or repairs, the warranty periods set out in section 8.9 and 8.10 shall begin to run once again.
- 8.7 Notwithstanding the transfer of risk, the Supplier shall bear the costs and risk related to the rectification (e. g. return costs, costs of transport).
- 8.8 The warranty period for deficiencies of material is three years, insofar as no statutory provisions provide longer periods.
- 8.9 The warranty period for deficiencies in title is five years, insofar as no statutory provisions provide longer periods.
- 8.10 The warranty period begins to run with the transfer of risk (see section 4.1). Upon delivery to locations where the Customer is operating outside its premises, the warranty period begins with the acceptance by the end customer
- 9. Duty to Verify Title/Duty to Inform**
- It is essential that the products are delivered free of any third party rights. Thus the Supplier is under a duty to verify title and inform the Customer of any possible conflicting industrial and intellectual property rights.
- 10. Subcontracting to Third Parties**
- Subcontracting to third parties shall not take place without the prior written consent of the Customer and entitles the Customer to cancel the contract in whole or in part and claim damages in the event of any failure. Subcontracting does not create any form of contractual relationship between the Client and the Supplier's Subcontractors. Subcontracting does not absolve the Supplier from any of its contractual

responsibilities or obligations; rather, it assumes responsibility for the actions of its Subcontractors. In the event that the Supplier fails to pay the subcontractors, the Customer shall withhold invoices and payments due to the Supplier and pay those amounts to the subcontractors directly.

## **11. Provided Material**

11.1 Material provided by the Customer remains the property of the Customer and is to be stored, labeled as property of the Customer and administered separately at no cost to the Customer. Their use is limited to the orders of the Customer only. The Supplier shall supply replacements in the event of reduction of value or loss, for which Supplier is responsible, even in the event of simple negligence. This also applies to the transfer of allocated material.

11.2 Any processing or transformation of the material shall take place for the Customer. The Customer shall immediately become owner of the new or transformed product. Should this be impossible for legal reasons, the Customer and Supplier hereby agree that the Customer shall be the owner of the new product at all times during the processing or transformation. The Supplier shall keep the new product safe for the Customer at no extra cost and in so doing exercise the duty of care of a merchant.

## **12. Tools, Patterns, Samples, Confidentiality etc.**

12.1 Any tools, patterns, samples, models, profiles, drawings, standard specification sheets, printing templates and materials provided by the Customer, as well as any materials derived there from, shall not be made available to any third party nor used for any other purpose than those contractually agreed except with the prior written consent of the Customer. Such materials shall be protected against unauthorized access or use. Subject to any further rights the Customer may demand that such materials be returned if the Supplier breaches these duties.

12.2 The Supplier shall not make available to any third party any information obtained from the Customer if such information is not already general knowledge or has not been lawfully obtained by the Supplier. Insofar as the Customer agrees to any subcontracting to a third party, such third party shall agree to such terms in writing.

## **13. Assignment of Claims**

Any assignment of any claim is only allowed with the prior written approval of the Customer. The Customer may award the contract to another company belonging to the same corporate group as the Customer, the sole requirement being that the Supplier must be notified.

## **14. Inability to Pay/Insolvency of the Supplier**

Should the Supplier cease to make payments, or if an interim insolvency administrator is appointed or if insolvency proceedings are applied for or commenced in relation to the assets of the Supplier, the Customer may terminate the contract and/or any purchase orders issued thereunder. In the event of termination the Customer may continue to utilize existing facilities, deliveries or services already performed by the Supplier in exchange for reasonable payment.

## **15. Code of Conduct for Siemens Suppliers, Security in the Supply Chain**

15.1 The Supplier is obliged to comply with the laws of the applicable legal system(s). In particular, the Supplier will not engage, actively or passively, nor directly or indirectly in any form of bribery, in any violation of basic human rights of employees or any child labor. Moreover, the Supplier will take responsibility for the health and safety of its employees, the Supplier will act in accordance with the applicable environmental laws and will use best efforts to promote this Code of Conduct among its suppliers.

15.2 The Supplier shall provide the necessary organizational instructions and take measures, particularly with regard to the following security: premises security, packaging and transport, business partner, personnel and information - in order to guarantee the security in the supply chain according to the requirements of respective internationally recognized initiatives based on the WCO SAFE Framework of Standards (e. g. AEO, C-TPAT). The Supplier shall protect the goods and services provided to the Customer or provided to third parties designated by the Customer against unauthorized access and manipulation. The Supplier shall only deploy reliable personnel for those goods and services and shall obligate any sub-suppliers to take equivalent security measures.

15.3 In addition to other rights and remedies the Customer may have, the Customer may terminate the contract and/or any purchase order issued thereunder in case of breach of the obligations under section 15 by the Supplier. However,

provided that Supplier's breach of contract is capable of remedy, Customer's right to terminate is subject to the proviso that such breach has not been remedied by the Supplier within a reasonable grace period set by Customer.

## 16. Environmental Protection, Duties to Declare, Dangerous Goods

16.1 Should the Supplier deliver products, substances of which are set out in the so-called "List of Declarable Substances" ([www.bomcheck.net/suppliers/restricted-and-declarable-substances-list](http://www.bomcheck.net/suppliers/restricted-and-declarable-substances-list)) applicable at the time of the order or which are subject to statutorily imposed substance restrictions and/or information requirements (e. g. REACH, RoHS), Supplier shall declare such substances in the web database BOMcheck ([www.BOMcheck.net](http://www.BOMcheck.net)) no later than the date of first delivery of products. With respect to statutorily imposed substance restrictions the foregoing shall only apply to laws which are applicable at the registered seat of Supplier or Customer or at the designated place of delivery requested by Customer.

16.2 Should the delivery contain goods which - according to international regulations - are classified as dangerous goods, the Supplier will inform the Customer hereof in a form agreed upon between Supplier and Customer, but in no case later than the date of order confirmation.

## 17. Export Control and Foreign Trade Data Regulations

17.1 Supplier shall comply with all applicable export control, customs and foreign trade regulations ("Foreign Trade Regulations"). Supplier shall advise Customer in writing within two weeks of receipt of the order -and in case of any changes without undue delay - of any information and data required by Customer to comply with all Foreign Trade Regulations in case of export and import as well as re-export, including without limitation:

- All applicable export list numbers, including the Export Control Classification Number according to the U.S. Commerce Control List (ECCN); and
- the statistical commodity code according to the current commodity classification for foreign trade statistics and the HS (Harmonized System) coding; and
- the country of origin (non-preferential origin); and - upon request of the Customer- Supplier's declaration of preferential origin (in case of European suppliers) or preferential certificates (in case of non-European suppliers).

17.2 The Supplier shall be liable for any expenses and/or damages incurred by Customer due to any breach of the obligations according to 17.1, unless Supplier is not responsible for such breach.

## 18. Reservation Clause

The Customer shall not be obligated to fulfill the agreement if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions, unless

Customer was or should have been aware of these obstacles when the agreement was concluded.

## 19. Mention as Reference Customer

Only upon Customer's prior written approval, the Supplier shall be allowed to mention the Customer as a reference customer and/or make reference to products or services which the Supplier has developed during the performance of an order for the Customer.

## 20. Supplementary Provisions

Insofar as the provisions of these Conditions of Purchase do not regulate certain matters, relevant statutory provisions shall apply.

## 21. Tax and Social Security Obligations of the Supplier

In the event that the Supplier undertakes any form of work or service relating to the activities of the Customer under article 42 of the Workers' Statutes, the Supplier shall, before commencing work and during execution of the contract, submit to the Customer a copy of the appropriate certification issued by the tax authorities confirming compliance with its tax obligations in line with Article 43 of the General Taxation Law, as well as proof of conformance with its Social Security obligations in line with Article 42 of the Workers' Statutes. Failure to comply with this clause may result in the automatic termination of the contract by the Customer.

## 22. Contract Postponement / Termination

The Customer may temporarily postpone and/or partially or wholly terminate the contract automatically and without incurring any cost whatsoever if:

- a) The Supplier fails to comply with any of its Tax or Social Security obligations.
- b) The Supplier fails to comply with the basic provisions of the contract or with these General Conditions.
- c) In the event that the contract between the Customer and End Customer is dissolved.

In both instances, the Customer shall retain all rights over the defaulting party and may claim for damages as a result.

Furthermore, the Customer may terminate the contract early, for any reason whatsoever, by sending a letter by registered post or other reliable means to the Supplier with a 60-day notice of termination in advance of the date it intends to terminate the contract. In this scenario, the Supplier shall be entitled only to payment for services rendered until the day the Contract is set to be terminated.

## 23. Place of Jurisdiction and Applicable Law

By mutual agreement, the parties submit themselves to the law and jurisdiction of the Madrid Courts and waive any other legal privilege that may apply.

The contract, together with all contractual documentation within the scope of the application and all relationships deriving from it shall be governed by Spanish law and be interpreted in accordance with the same, except where the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 apply.