

## Conditions of Purchase

### 1. Definitions

#### 1.1. Definitions

In these Conditions, unless otherwise indicated by the context:

**Agreed Price** means the amount(s) which Siemens has agreed in writing is payable for the Work;

**Agreement** means the agreement between Siemens and the Supplier consisting of a Purchase Order (including any special conditions), these Conditions and all documents attached by Siemens or which Siemens agrees are incorporated by reference;

**Authority** means any:

- (a) government, government department or government agency;
- (b) governmental, semi-governmental or judicial person including a statutory corporation; or
- (c) other person (whether autonomous or not) charged with the administration of a Law;

**Background IP Rights** means IP Rights of a Party or a third party which: (a) are already in existence prior to the date of the Agreement; or (b) come into existence on or after the date of the Agreement otherwise than in connection with the Agreement;

**Business Day** means Monday through Friday (excluding public holidays in the jurisdiction where the Work is being carried out);

**Chief Executive Officer** means the managing director, chief executive officer or the chief financial officer of a Party;

**Claim** means any demand, claim, action or legal proceeding of any nature including any claim for: an increase to the Agreed Price; the payment of any money (including damages); an extension of time; or a reduction of the Supplier's obligations or Siemens' rights:

- (a) arising out of or in relation to the Agreement (including any direction by Siemens under it);
- (b) arising out of or in relation to the Work under the Agreement; or
- (c) arising otherwise at Law including:
  - (i) under statute or in equity;
  - (ii) in tort for negligence or otherwise (including negligent misrepresentation); and
  - (iii) for restitution (as a result of unjust enrichment or otherwise);

**Conditions** means these conditions of purchase;

**Confidential Information** means all information regardless of form which is disclosed directly or indirectly by Siemens to the Supplier in connection with the Agreement which is treated or designated as confidential by Siemens or Siemens' Personnel or which the Supplier ought to know is confidential and includes without limitation: (a) trade and business secrets; (b) information concerning customers, suppliers and Related Companies; (c) product and pricing information; (d) samples, models and prototypes; (e) Personal Information (including information about Siemens' Personnel); and (f) all information, data and knowledge of a commercial, operational, marketing, business, technical or financial nature relating to the affairs of Siemens or its Related Companies;

**Date for Delivery** means the delivery date by which the Work must be delivered under the Agreement;

**Date of Delivery** means the date upon which Delivery is achieved (as extended by any extension of time granted by Siemens under the Agreement);

**Date of Final Completion** means the date that Final Completion is achieved as confirmed in writing by Siemens' Representative under clause 15.16;

**Defect** means that any part of the Products or aspect of the Services which are not in accordance with the requirements of the Agreement;

**Defects Liability Period** means in respect of any Work, a period of 18 months commencing upon the Date of Delivery of that Work or such other period as agreed between the Parties in writing;

**Delivery** means:

- (a) in respect of Products – when the Products have been delivered to Site in accordance with the requirements of the Agreement and have been goods received by Siemens; and
- (b) in respect of Services – when the Services have been performed in accordance with the requirements of the Agreement; and
- (c) in respect of both the Products and Services – when all associated Documents and other information required to be delivered by the Supplier under the Agreement have been received by Siemens;

**Delivery Schedule** means the schedule (if any) agreed between the Parties for the execution of the Work showing the dates by which, or the times within which, any milestones, stages or portions of the Work are to be carried out or completed under the Agreement;

**Dispute** has the meaning given in clause 25;

**Documents** means all drawings, calculations, technical information, samples, specifications, software, operating and maintenance manuals and other technical information and particulars submitted (or to be submitted) by the Supplier, regardless of the form in which it is made available and irrespective of the medium in which it is embedded;

**Facilities** means the Supplier's sites used in connection with the Work;

**Final Completion** means when all Defects Liability Periods have expired and Siemens is satisfied that all of the Supplier's obligations under the Agreement have been fulfilled;

**Force Majeure Event** means an exceptional event or circumstance which are beyond a Party's control including:

- (a) nationwide industrial disputes (which are not specific to that Party or that Party's employees, officers, agents, consultants, other contractors or subcontractors);
- (b) Acts of God, epidemics and natural disasters (excluding inclement weather that is usual for that time of year);
- (c) war, civil unrest, terrorism; and
- (d) delays or disruption by Authorities,

provided that such events are unforeseeable, unavoidable, and will prevent or delay the performance of a Party's obligations under the Agreement;

**GST Law** means the *Goods and Services Tax Act* 1985 and the related provisions of the *Tax Administration Act* 1994;

**Incoterms** means Incoterms® 2010 published by the International Chamber of Commerce, Paris;

**IP 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 or registrable and including all applications for registration) in relation to inventions (including patents), trade marks, trade and business names, designs, copyright, circuit layout rights, trade secrets, know-how, moral rights and confidential information and all other rights of a proprietary nature created in any part of the world as a result of intellectual activity in the industrial, scientific, literary and artistic fields;

**Latent Defect** means any Defect which could not reasonably have been detected prior to the expiry of the Defects Liability Period;

**Law** means any applicable:

- (a) statutes, rules, regulations, by-laws, orders, codes, standards, ordinances and proclamations of the jurisdiction where the Work or a particular part is being carried out;
- (b) principles of common law and equity;
- (c) authorisations and requirements of Authorities or organisations having jurisdiction where the Work or a particular part is being carried out; and
- (d) fees, charges, taxes, tariffs and duties payable in connection with the foregoing;

**Loss** means: (a) any cost, expense, liability, loss or damage; and (b) in relation to a Claim, Loss includes amounts payable on the Claim (whether or not the Claim is successful), legal costs and disbursements on a full indemnity basis;

**Open Source Software** means any software that is licensed royalty-free by the licensor of such software to any user of the software under any licence terms or other contract terms ("**Open Licence Terms**") which require, as a condition of modification and/or distribution of such software and/or any other software incorporated into, derived from or distributed with such software ("**Derivative Software**"):

- (a) that the source code of such software and/or any Derivative Software be made available to third parties; or
- (b) that permission for creating derivative works of such software and/or any Derivative Software be granted to third parties;

**Party** means Siemens or the Supplier and "**Parties**" means both of them;

**Personnel** means the employees, officers, agents, consultants, other contractors and subcontractors of a Party;

**Personal Information** has the meaning given in the *Privacy Act* 1993 ("**Privacy Act**");

**Policies** means Siemens' written guidelines, policies, principles, procedures, requirements and rules issued from time to time;

**PPSA** means the *Personal Property Securities Act* 1999;

**Privacy Laws** means:

- (a) the Privacy Act, the *Telecommunications (Interception Capability) Act* 2004 and Siemens' privacy protection Policies issued from time to time; and
- (b) any other Laws and Policies relating to the collection, use, storage or granting of access rights to Personal Information;

**Products** means the goods and other associated materials (including Documents) supplied or to be supplied by the Supplier under the Agreement including product which is the output of any Services to be provided by the Supplier;

**Purchase Order** means the document titled 'Purchase Order' in or to which these Conditions are referred or attached and which is deemed to incorporate the terms of these Conditions;

**Related Company** has the meaning given in the *Companies Act* 1993;

**Relevant PPSA Matter** means:

- (a) the Agreement;
- (b) a transaction under, or in connection with, the Agreement; or
- (c) any Products supplied by the Supplier, or being held by the Supplier for the benefit of Siemens, in accordance with the terms of the Agreement;

**Security** means security of the type referred to in clause 9.1;

**Security Interest** means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind. It includes:

- (a) anything which gives a creditor priority to other creditors with respect to any asset; and
- (b) retention of title other than in the ordinary course of day-to-day trading and a deposit of money by way of security.

**Serial Defect** means a Defect that occurs in at least 20% of Products supplied by the Supplier if the cause of such Defect is the same or similar;

**Services** means the services provided or to be provided by the Supplier under the Agreement;

**Siemens** means Siemens (N.Z.) Limited of 55 Hugo Johnston Drive, Penrose, Auckland, New Zealand or its Related Company that places the Purchase Order;

**Siemens' Representative** means the person nominated as such by Siemens details of whom are specified in the Agreement or notified by Siemens to the Supplier in writing from time to time;

**Site** means the Siemens or third party site to which Products are to be delivered or at which Services are to be performed (but excludes the Facilities);

**Supplier** means the person or other entity named in the Purchase Order as the supplier or vendor of the Work;

**Supplier's Representative** means the person nominated as such by the Supplier pursuant to clause 3.14 or any other person nominated in writing by the Supplier as a replacement details of whom are notified to Siemens' Representative; and

**Work** means the supply of the Products and Services under the Agreement.

## 1.2. Interpretation

In these Conditions, unless otherwise agreed by the Parties or required by the context:

- (a) a reference to the Agreement or any other document or agreement, includes any variation, replacement or novation of them;
- (b) the use of the word "includes" or "including" shall be interpreted to mean "includes" or "including without limitation";
- (c) headings are for ease of reference only and do not affect interpretation;
- (d) the singular includes the plural and vice versa;
- (e) a gender includes all genders;
- (f) a reference to "\$" or "dollars" is to New Zealand dollars;
- (g) a reference to a party to the Agreement or another agreement or document includes the Party's successors, permitted substitutes and permitted assigns (and, where applicable, the Party's legal personal representatives);
- (h) a person includes a body corporate and vice versa;
- (i) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase shall have corresponding meanings;
- (j) a reference to all or any part of a Law includes that Law as amended, consolidated, re-enacted or replaced from time to time;
- (k) a reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing;
- (l) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;
- (m) references to clauses and schedules are to clauses in and schedules to the Agreement; and
- (n) references to "day" or "year" shall mean a calendar day and a calendar year respectively.

## 2. Formation of Contract

- 2.1. Acceptance of the Purchase Order shall be deemed to be an acceptance by the Supplier of these Conditions to the exclusion of any other terms supplied by or referred to by the Supplier (including in any acknowledgement of receipt or confirmation of Purchase Order), unless and to the extent that Siemens expressly agrees in writing to the incorporation of such other terms or any variation of these Conditions.
- 2.2. If the Supplier commences Work the Supplier shall be deemed to have accepted the Purchase Order and these Conditions notwithstanding any failure to provide written acceptance.
- 2.3. Upon acceptance of the Purchase Order, the Agreement commences and the Supplier will be bound to provide the ordered Products and Services in accordance with the requirements of the Agreement. The Agreement shall continue in force until Final Completion (unless terminated earlier in accordance with the Agreement).
- 2.4. The Supplier shall inspect each Purchase Order and all associated documents submitted by Siemens to the Supplier and shall immediately request clarification from Siemens if anything is unclear or if any information appears to be ambiguous, inadequate or missing.

## 3. Supplier's General Obligations and Warranties

Without limiting any other obligation under the Agreement, the Supplier:

- 3.1. shall ensure that the Products and Services comply with and are completed in accordance with all requirements set out or referred to in the Agreement (including all specifications);
- 3.2. shall be responsible for any discrepancies, errors or omissions in Documents provided to Siemens by the Supplier and shall carefully check information of any kind provided to it by Siemens;

- 3.3. shall comply with all Privacy Laws in relation to Personal Information, whether or not the Supplier is an organisation bound by the Privacy Act;
- 3.4. shall ensure that packaging for Products is suitable, minimized and environmentally compatible and that the Supplier complies with all packaging, marking and labelling requirements of Siemens that are communicated to the Supplier;
- 3.5. shall ensure that it and its Personnel comply with all Laws including:
  - (a) any applicable anti-corruption and anti-bribery Laws including the *Crimes (Bribery of Foreign Public Officials) Amendment Act 2001* and other criminal Laws;
  - (b) taxation Laws
  - (c) Laws relating to employees including those governing freedom of association; employment conditions, remuneration and entitlements; minimum working age; equal opportunity and discrimination;
  - (d) competition Laws including the *Commerce Act 1986*;
  - (e) Laws governing occupational health and safety and environmental protection; and
  - (f) road and transport Laws.
- 3.6. must at all times co-operate with Siemens and Siemens' Personnel (including Siemens' other contractors and subcontractors) in order to allow, and not to disrupt, the proper provision of any goods and services whether internally by Siemens or by such Siemens' Personnel;
- 3.7. shall ensure that if the Supplier is required to provide Siemens with Documents under the Agreement, Siemens is given ownership of such Documents or Siemens is granted a perpetual, transferable and royalty-free licence to use, duplicate and alter the Documents (and associated technical data) to meet Siemens' requirements;
- 3.8. shall ensure that it has not relied upon information provided by or on behalf of Siemens without independently verifying that information and satisfying itself of the accuracy, adequacy and correctness of that information;
- 3.9. shall ensure that in supplying the Work, the Supplier exercises the degree of skill, diligence and prudence which would reasonably be expected from a skilled and experienced Supplier engaged in the same type of work under the same or similar circumstances;
- 3.10. shall not change the Facilities unless agreed in writing by Siemens,
- 3.11. shall ensure that the Supplier has registered as a supplier on Siemens' on-line supplier platform 'click4suppliers easy' ("**c4s easy**") and keeps its registration details up to date and that the Supplier has completed the supplier qualification process on c4s easy and remains so qualified while it has obligations under the Agreement.
- 3.12. warrants, without limiting any other provisions of the Agreement (or otherwise), that:
  - (a) all Products will:
    - (i) be new, of merchantable quality, and be fit for their intended purpose;
    - (ii) provide the full functionality and performance claimed for the Products;
    - (iii) be free from Defects;
    - (iv) comply with all requirements of the Agreement including the specifications and with generally accepted engineering, manufacturing and industry standards; and
    - (v) in the case of software and hardware, when in operation, calculate dates correctly for the period of the useful life of the Products;
  - (b) all Services will be provided with due skill and care to the standard reasonably to be expected of a person performing the business of the Supplier in accordance with clause 3.9;
  - (c) the Supplier has examined Siemens' requirements under the Agreement, and any other information made available in writing by Siemens to the Supplier and has considered and evaluated all other information and matters relevant to the risks, contingencies and other circumstances relating to the Work (including the Site and all requirements relevant to the Work) and is satisfied that the Agreed Price includes due allowance for all such matters and things necessary for the proper performance and completion of the Work and for fulfilling all of the Supplier's obligations under the Agreement; and
  - (d) the Supplier has fully checked and verified the requirements of the Agreement and will not request any adjustment to the Agreed Price for the Work or any extension of time arising out of any errors, omissions, ambiguities or discrepancies in respect of the Agreement;
- 3.13. represents and warrants that it shall not either directly or indirectly provide to any officer, employee or agent of Siemens any benefit which might reasonably be construed as an inducement for such person to show favour to the Supplier; and
- 3.14. shall ensure that at all times a representative is appointed by the Supplier who is authorised to represent and bind the Supplier in all matters relating to the Agreement ("**Supplier's Representative**"). The Supplier shall ensure that Siemens' Representative is provided at all times with the current contact details for the Supplier's Representative. The Supplier shall not change the Supplier's

Representative without the prior written notice to Siemens. All matters notified by Siemens to the Supplier's Representative or otherwise within the knowledge of the Supplier's Representative will be deemed to have been notified to the Supplier and within the Supplier's knowledge. The Supplier's Representative shall promptly respond to requests and queries of Siemens' Representative and shall meet and liaise with Siemens' Representative at such times and intervals as deemed necessary by Siemens.

#### 4. Site & Access

If the Agreement requires the Supplier to perform Work on Site:

- 4.1. the Supplier is responsible for inspecting the Site and surrounding areas where the Work will be performed and for ensuring that it is familiar with all Site conditions, including access, soil and subsoil conditions, asbestos and all other Site conditions relevant to the performance of the Work (including all applicable Laws) and for making all reasonable enquiries and investigations that may affect the cost and expense of executing the Work;
- 4.2. the Supplier shall be given access to the Site at agreed times;
- 4.3. the Supplier's Personnel shall attend all required Site induction sessions before commencement of Work on any Site and the Supplier shall comply with and shall ensure that when on Site, the Supplier's Personnel comply with all Policies and Laws applicable to the Site;
- 4.4. unless otherwise agreed in writing the Supplier shall provide at its expense all facilities, constructional plant and other amenities as may be required for the performance of the Work at the Site; and
- 4.5. the Supplier acknowledges and agrees that there may be other contractors on or around the Site and agrees that the Agreed Price includes all of the Supplier's costs and expenses associated with managing the Supplier's interface and co-ordination of the Works with the works of such other contractors.

#### 5. Delivery

- 5.1. The Supplier shall deliver Products without additional charge to Siemens, to the Site for delivery stated in the Agreement by the stated Dates for Delivery. Siemens may postpone delivery of Products and the Supplier shall comply with any such instruction. Unless the instruction was due to any act, default, negligence or omission by the Supplier or the Supplier's Personnel, the Supplier may claim an extension of time in accordance with the Agreement.
- 5.2. Without limiting any other provision of the Agreement or any Law, the Supplier shall ensure that, in delivering the Products and when using vehicles, machinery and equipment in connection with the Work, the Supplier and its Personnel:
  - (a) comply with all mass, dimension and load restraint requirements for vehicles and the carriage of goods;
  - (b) comply with all driving hours, speed and traffic requirements;
  - (c) comply with all relevant requirements in relation to container weight declarations;
  - (d) manage all transport and journey documentation, including consignment notes, declarations, manifests and log books;
  - (e) provide Siemens, upon request, with all information and documentation reasonably required by Siemens (or a relevant Authority) to monitor or audit compliance with this clause (including permitting inspections of transport and journey documentation and vehicles);
  - (f) notify Siemens upon becoming aware of any breach by the Supplier or its Personnel of this clause.
  - (g) be responsible for the safe transportation of the Products and any equipment necessary for performance of the Work to, from and on the Site in accordance with the Delivery Schedule;
  - (h) investigate the route for transport of the Products and be responsible for any civil works in relation to the roads that are necessary to ensure that its loads can be transported to meet the requirements of the Agreement;
  - (i) obtain any necessary permits relating to the movement of its loads to, from and on the Site;
  - (j) comply with all regulations regarding traffic, transit or access of labour, goods, equipment and materials, to, from and on the Site and must also comply with all Laws applicable to the use of existing public and private roads;
  - (k) develop a detailed traffic management and transportation plan for the Work, and produce a copy upon request to Siemens;
  - (l) ensure that the Supplier and the Supplier's Personnel exercise due care in using the transport routes so as not to cause damage to any of the roads or bridges connecting with or on the route to, from and on the Site by any traffic of the Supplier or any of the Supplier's Personnel;
  - (m) continuously inform itself of the suitability of the planned transport route and take into account and plan for the relevant climatic conditions and their influence on the transport route; and
  - (n) at the Supplier's risk and expense verify that any vehicles, machinery and equipment made available by Siemens for transportation fulfils the requirements for the Products being transported and exercise the same degree of care over such vehicles, machinery and equipment as if they were the Supplier's own.
- 5.3. The Supplier shall ensure that:

- (a) appropriate vehicles, machinery and equipment are available to transport the Products by the Date for Delivery and that such vehicles, machinery and equipment are in good working and maintained condition; comply with all Laws; have been inspected and passed as ready and safe for operation in accordance with such Laws; are suitable for the Work and meet all requirements of the Agreement; are equipped with sufficient means for securing and protecting the Products and are equipped with fully operational communication systems;
  - (b) operators and drivers are available at all times necessary to operate vehicles, machinery and equipment in order to support the proper sequence, performance and completion of the Work; and
  - (c) all operators and drivers are capable, experienced, sufficiently qualified, certified and suitable to perform the Work in accordance with the Law and are trained in occupational health and safety and instructed to stop Work whenever they consider it likely that the Work does not comply with occupational health, safety or environmental regulations and to inform Siemens accordingly.
- 5.4. The Supplier shall bear the risk of delays including waiting time during transportation unless such delay is caused by Siemens.
  - 5.5. The Supplier shall ensure that prior to the delivery or use of any dangerous goods or hazardous substance (together known as "**Hazardous Substance**") on Site, the Supplier:
    - (a) applies appropriate labelling;
    - (b) provides Siemens with a copy of the current Safety Data Sheet for such Hazardous Substance that complies with the Code of Practice for the Preparation of Safety Data Sheets; and
    - (c) provides Siemens with a completed risk assessment if Services include the use of such Hazardous Substances; and
    - (d) complies in all respects with the requirements of the *Hazardous Substances and New Organisms Act 1996* and related regulations.
  - 5.6. The Supplier shall ensure that:
    - (d) appropriate vehicles, machinery and equipment are available for such transportation in accordance with the Delivery Schedule and that such vehicles, machinery and equipment are in good working and maintained condition; comply with all Laws; have been inspected and passed as ready and safe for operation in accordance with such Laws; are suitable for the Work and meet all requirements of the Agreement; are equipped with sufficient means for securing and protecting the Products and are equipped with fully operational communication systems;
    - (e) operators and drivers are available at all times necessary to operate vehicles, machinery and equipment in order to support the proper sequence, performance and completion of the Work in accordance with the Delivery Schedule; and
    - (f) all operators and drivers are capable, experienced, sufficiently qualified, certified and suitable to perform the Work in accordance with the Law and are trained in occupational health and safety and instructed to stop Work whenever they consider it likely that the Work does not comply with occupational health, safety or environmental regulations and to inform Siemens accordingly.
  - 5.7. The Supplier shall bear the risk of delays including waiting time during transportation unless such delay is caused by Siemens.
  - 5.8. Unless otherwise agreed between the Parties in writing the Supplier shall ensure that all Products are adequately insured, packaged and protected, loaded and transported to ensure safe delivery to the Site by the Date for Delivery including, where carriage is by sea, ensuring that non-containerised Products are stowed under deck unless otherwise agreed by Siemens in writing.
  - 5.9. The Supplier shall ensure that Products are accompanied by the requisite delivery documents (including any shipping and customs documents) at no additional cost and that a delivery note excluding the price is supplied with all deliveries and shall provide Siemens with copies of all transport related permits and any other transport documents promptly upon request or at the times set out in the Agreement.
  - 5.10. Delivery notes must include all information requested by Siemens and the Supplier must obtain the signature of an authorised representative of Siemens on the delivery note evidencing goods receipt. The signing of the delivery note or the passing of title to Siemens will not constitute approval by Siemens of the Supplier's performance of its obligations, nor be taken as an admission or evidence that any of the Products comply with the requirements of the Agreement nor prejudice any rights or powers of Siemens in any way.
  - 5.11. Partial, advance, excess or short deliveries may only be made with the prior written consent of Siemens' Representative. The Supplier shall indemnify Siemens for any Loss suffered or incurred by Siemens as a result of any unapproved partial, advance, excess or short deliveries (including transport costs).

## 6. Title, Property and Risk

- 6.1 Unless otherwise agreed between the Parties, title to and property in Products passes to Siemens upon payment or delivery, whichever occurs first. Risk in Products shall pass to Siemens in accordance with the relevant Incoterms specified in the Agreement (or if no Incoterms are so specified, upon the Date of Delivery of the Products to the nominated Site for delivery specified in the Agreement).
- 6.2 For each Product, the Supplier warrants that at the time of delivery of the Product to Site:
- the Supplier has complete ownership of the Product free of any liens, charges, Security Interests and encumbrances and provides the Product to Siemens on that basis; and
  - Siemens is entitled to clear, complete and quiet possession of the Product.

## 7. Export Control and Foreign Trade Regulations

- 7.1. The Supplier shall comply with all applicable export control, customs and foreign trade regulations ("**Foreign Trade Regulations**").
- 7.2. The Supplier shall advise Siemens in writing as early as possible but not later than 14 days after receipt of the Purchase Order – and promptly in case of changes – of any information and data required by Siemens to comply with all Foreign Trade Regulations in the case of export and import as well as re-export, including:
- all applicable export list numbers, including the 'Export Control Classification Number' according to the U.S. Commerce Control List (ECCN);
  - 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 Siemens' request, the Suppliers' declaration of preferential origin (in case of European suppliers) or preferential certificates (in case of non-European suppliers).
- 7.3. The Supplier shall indemnify Siemens and Siemens' Personnel from and against any Claims and Loss incurred or suffered by them due to any breach of this clause 7 by the Supplier or the Supplier's Personnel.
- 7.4. Siemens shall not be obligated to fulfil the Agreement if such fulfilment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargos or other sanctions.

## 8. Price & Payment

- 8.1. The Supplier shall only invoice Siemens at the times or intervals set out in the Agreement or at such other times as otherwise agreed between the Parties. Subject to any contrary term of the Agreement and Siemens' rights under the Agreement, Siemens shall pay the Supplier within 90 days after the Supplier's correctly rendered invoice is received.
- 8.2. Unless otherwise specified in the Agreement, prices:
- are fixed and may not be varied without the prior written consent of Siemens; and
  - are in New Zealand dollars and include all Government taxes, duties, excises, tariffs and charges (except GST).
- 8.3. Siemens shall not be required to pay any invoice (or any part of the invoice) or reimburse the Supplier for any approved expenses unless Siemens receives a correctly rendered invoice. An invoice will be correctly rendered if:
- the Work to which the invoice relates has been provided in accordance with the requirements of the Agreement;
  - the specified amount is correctly calculated and due for payment;
  - the invoice specifies the Purchase Order number, Product item number (if applicable) and all other relevant details requested by Siemens and the invoice is set out in a manner that enables Siemens to ascertain the Work to which the invoice relates and the amount payable in respect of such Work;
  - the invoice is accompanied (where necessary or where reasonably requested by Siemens) by verifying documentation;
  - the invoice reflects the Agreed Price or expenses which have been previously approved by Siemens;
  - the invoice includes all information necessary for it to be used as a valid tax invoice for GST purposes (where the invoice includes an amount in respect of GST); and
  - the invoice is forwarded to the correct Siemens invoice address specified in the Purchase Order.
- 8.4. Siemens shall not be required to pay the Agreed Price (or any part of the Agreed Price) for the Work or reimburse the Supplier for any agreed expenses unless the Supplier has provided Siemens with:
- all required bank details to enable the electronic transfer of the Agreed Price;
  - Security (if any is required by Siemens) in accordance with the terms of the Agreement; and
  - evidence that all insurance required to be effected by the Supplier under the Agreement has been effected.

- 8.5. The Supplier acknowledges and agrees that Siemens may withhold from the Agreed Price otherwise payable to the Supplier any amounts required to be withheld or remitted by Siemens to relevant authorities under any applicable Laws.

- 8.6. The Parties agree that the consideration for any supply made under or in connection with the Agreement does not include GST. To the extent that any supply made under or in connection with the Agreement is a taxable supply, the consideration for that taxable supply is the amount for that taxable supply specified in the Agreement plus GST and the GST must be paid at the same time as the payment for the Taxable Supply is required to be made under the Agreement. Each Party must do all things (including providing the other Party with tax invoices and all other documentation that may be necessary or desirable to enable or assist the other Party to claim any input tax credit, adjustment, set off, rebate or refund for or in relation to any amount of GST paid or payable pursuant to any taxable supply made under or in connection with the Agreement. Words used in this clause which have a defined meaning in the GST Law have the same meaning as given in the GST Law, unless the context otherwise requires.

- 8.7. Siemens and the Supplier may agree in writing upon special pricing arrangements such as rebate schemes, price review mechanisms, exchange rate variation mechanisms and rise and fall pricing.

- 8.8. Without prejudice to any other rights or remedies available to Siemens, Siemens may set-off, deduct or withhold from any amount due by Siemens to the Supplier any amount which the Supplier, is liable to pay to Siemens however or whenever incurred (including under an indemnity).

- 8.9. To the extent permitted by Law, Siemens has no obligation to make any payment in respect of any Supplier invoice unless and until the Supplier has provided certificates of currency for all insurances required to be effected and maintained by the Supplier under clause 23.

- 8.10. If Siemens becomes liable to pay any amount to any third party by reason of the Supplier's failure to provide the documentary evidence required under the Agreement, then clause 8.8 applies and Siemens may pay such amount and may also have recourse to any Security it may be holding from the Supplier to pay any such liability.

- 8.11. Payment by Siemens to the Supplier shall not:
- constitute approval or acceptance of the Work or prejudice any claim by Siemens;
  - constitute evidence of the value of any Work; or
  - be construed to mean that the Work has been supplied in accordance with the Agreement and shall not relieve the Supplier from any of the Supplier's obligations and responsibilities under the Agreement.

- 8.12. The Supplier must notify Siemens in writing if any of the Supplier's contractors, subcontractors, consultants or suppliers ("Contractors") are or may be entitled to exercise a right to suspend work under a relevant agreement or subcontract pursuant to *The Construction Contracts Act 2002*.

- 8.13. In circumstances described in clause 8.12 above:
- Siemens is entitled (but is not obliged) to provide a form of security to or to pay the Contractor to avoid suspension of work by such party; and
  - the Supplier indemnifies Siemens for any loss or damage (direct or indirect) that Siemens may suffer as a result of a suspension by a Contractor, unless and to the extent that such suspension is caused by the acts of Siemens or Siemens' Personnel (other than the Supplier).

- 8.14. If Siemens exercises its entitlement to provide a form of security or payment to a Contractor under clause 8.13, then the amount of that security or payment plus any associated costs to Siemens arising from a call on that security or provision of that security, will be a debt due by the Supplier to Siemens and may be set-off by Siemens against any other payments that are due or become due to the Supplier.

## 9. Security

- 9.1. Siemens may deduct retention monies equal to 5% of the value of each invoice (or such other percentage as agreed between the Parties in writing) due and payable to the Supplier to secure the proper performance of the Supplier's obligations under the Agreement. The Supplier may at any time provide an unconditional bankers' undertaking with a bank and in a form reasonably approved by Siemens in lieu of retention monies.

- 9.2. Siemens may have recourse to the Security if the Supplier suffers any Loss or Claims due to any act, default, negligence or omission of the Supplier or the Supplier's Personnel and the Supplier must not take any steps to injunct or otherwise restrain:

- any issuer of such Security from paying Siemens pursuant to the Security;
- Siemens from taking any steps for the purposes of making a demand under any such Security or receiving any payment under any such Security; or
- Siemens using the Security proceeds.

- 9.3. Siemens:
- (a) is not obliged to pay the Supplier interest in connection with any Security or the proceeds of any Security converted into cash; and
  - (b) does not hold any Security proceeds on trust for the Supplier.
- 9.4. Without limiting the generality of clause 9.2, Siemens shall be entitled to have recourse to the Security provided under the Agreement, for amounts which Siemens is required to pay to third parties (whether pursuant to the Law or otherwise) due to any acts, default or omissions of the Supplier.
- 9.5. Subject to any recourse, the amount of the Security shall be reduced by 50% upon the Date of Delivery of the Work and the remainder shall be paid or released within 14 Business Days after the Date of Final Completion.

## 10. Time

- 10.1. The Supplier shall perform the Work under the Agreement competently, with due expedition and without delay (including in accordance with the Delivery Schedule (if any) for the Work) so as to deliver the Work by the Date for Delivery, which date is binding and of the essence of the Agreement
- 10.2. The Supplier shall take all reasonable steps to avoid delay and shall notify Siemens immediately if a delay to the Delivery Schedule (if any) or the Date for Delivery is expected to occur. The Supplier shall bear all costs of any express shipments required to enable the Supplier to meet the applicable Date for Delivery.
- 10.3. The Supplier shall ensure that progress (including against the Delivery Schedule (if any)) is monitored at all times and shall update Siemens of this progress at the intervals requested by Siemens. The Supplier shall inform Siemens of the name of the Supplier's employee who shall be responsible for monitoring deadlines and shall ensure that such employee is authorised to take all measures and to issue all instructions which, in Siemens' opinion, may be necessary to ensure that deadlines are adhered to.
- 10.4. Review of, comments on or approval of, or any failure to review or comment on, any Delivery Schedule by Siemens will not:
- (a) relieve the Supplier from, or alter, the Supplier's liabilities or obligations under the Agreement;
  - (b) evidence or constitute the granting of an extension of time or a direction by Siemens to accelerate, disrupt, prolong or vary any Work under the Agreement; or
  - (c) affect the time for carrying out the Work under Agreement.
- 10.5. The Supplier shall ensure that any Work supplied on a Siemens or Siemens customer Site is performed during the hours agreed between the Parties.
- 10.6. If the Supplier does not achieve Delivery by the Date for Delivery, the Supplier shall pay to Siemens (and Siemens may deduct) liquidated damages equal to 1% of the Agreed Price for each day of delay capped at 10% of the Agreed Price (or such other liquidated damages amount and cap as may be agreed between the Parties in writing). Liquidated damages shall be applied from the Date for Delivery up until the earlier to occur of: (a) the Date of Delivery; and (b) the liquidated damages cap being reached.
- 10.7. The Supplier acknowledges that the liquidated damages set out in the Agreement are a genuine pre-estimate of loss, are not a penalty and are without prejudice to any other rights or remedies of Siemens under the Agreement. The obligation to pay or payment of such liquidated damages by the Supplier shall not affect any other obligations of the Supplier under the Agreement.

## 11. Extensions of Time

- 11.1. The Supplier may claim an extension of time under the Agreement in accordance with this clause, if the Supplier has been or will be delayed in executing the Work by the Date for Delivery due to:
- (a) a breach of contract by Siemens;
  - (b) variations directed in writing by Siemens under clause 12 (unless such variation has been requested due to any act, default, negligence or omission by the Supplier or the Supplier's Personnel); and
  - (c) suspension under clause 13.2 (unless the suspension was due to any act, default, negligence or omission of the Supplier or the Supplier's Personnel).
- 11.2. If an extension of time is granted by Siemens, Siemens shall as soon as practicable notify the Supplier in writing of the extension of time granted and if the claim for an extension of time (or any part) is rejected, Siemens shall notify the Supplier of the reasons for the rejection.
- 11.3. The Supplier shall not be granted an extension of time under the Agreement unless the delay for which the extension is claimed is on the critical path of the Delivery Schedule (if any) or has affected or will affect the Supplier's ability to meet the Date for Delivery. Where there are concurrent delays, the Supplier shall not be entitled to claim an extension of time for the period where the delays overlap.
- 11.4. As a condition precedent to being granted an extension of time, the Supplier must:
- (a) notify Siemens in writing of the likelihood of the delay, as soon as becoming aware of the likelihood of the delay;

- (b) at the Supplier's cost, take all reasonable steps possible to prevent the cause of the delay and to mitigate the extent and consequences of the delay;
- (c) within 7 days after the occurrence of the cause of any delay, notify Siemens in writing of the Supplier's intention to apply for an extension of time, specifying the cause of the delay, an estimated duration of the delay and the steps that the Supplier will take to mitigate the delay (which notices shall be consecutively numbered and otherwise be in the format requested by Siemens);
- (d) within 14 days after the occurrence of the cause of any delay, give Siemens a written claim for an extension of time. The claim shall state all the facts upon which the claim is based, the extension period claimed and shall show and justify any effect the extension of time shall have on the Delivery Schedule (if any) and the Date for Delivery, which claim shall be accompanied by a copy of the Delivery Schedule (if any) which has been marked up to show the direct impact of the delay and the revised Date for Delivery.

- 11.5. Notwithstanding that the Supplier is not entitled to or has not claimed an extension of time, Siemens may at any time and from time to time before Final Completion direct an extension of time.

## 12. Variations

- 12.1. Siemens may direct the Supplier to vary the Work including by increasing, decreasing, or omitting any part of the Work. The Supplier shall not vary the Work except as directed in writing by Siemens.
- 12.2. The Supplier shall immediately notify Siemens if the Supplier considers that it is not possible for the Supplier to comply with a variation direction and shall provide written reasons for not being able to do so.
- 12.3. If the Supplier considers that the variation will have an effect on the value of the Work, the Date for Delivery, or the Delivery Schedule, or if so requested in writing by Siemens, the Supplier shall:
- (a) within 5 Business Days after a variation is directed, submit to Siemens a statement advising whether or not a difference in Agreed Price will arise as a result of the directed variation and shall advise Siemens of the approximate value of the cost difference (which statements shall be consecutively numbered and otherwise be in the format requested by the Supplier);
  - (b) within 10 Business Days after a variation is directed, submit to Siemens a detailed statement of the cost of any variation (bearing the same number and in the same format as stipulated in clause 12.3(a)) which statement shall set out all adjustments to the Agreed Price and other amounts claimed by the Supplier arising out of or in relation to the applicable variation request (on the basis that all other adjustments and/or amounts not included in the detailed statement arising out of or in relation to such variation shall be deemed to have been waived by the Supplier); and
  - (c) comply with clause 11 if it intends to claim an extension of time.
- 12.4. The Supplier shall not be entitled to claim any payment for any variation unless Siemens has directed the Supplier in writing to execute the variation and the Supplier has complied with this clause 12. If the Supplier has not complied with clause 12, the Supplier may not claim any extension of time or any additional payment. The Supplier shall promptly implement variations to the Work requested by Siemens.
- 12.5. No variation shall invalidate the Agreement and the Supplier agrees that Siemens may engage others to carry out any parts of the Work which Siemens directs the Supplier to omit. Any direction to omit Work will not constitute a repudiation of the Agreement regardless of the extent or timing of that direction.

## 13. Suspension

- 13.1. The Supplier shall not suspend the supply of the Work without a written request from Siemens.
- 13.2. Siemens may at any time request that the progress of the whole or part of the Work under the Agreement be suspended for such period as Siemens deems necessary. In such case, the Supplier shall, in consultation with Siemens, cease to perform the applicable Work. If during a suspension period, Siemens instructs the Supplier to resume the Work, the Supplier shall promptly recommence execution of the Work.
- 13.3. Suspension shall not affect the Date for Delivery specified in the Agreement but the cause of the suspension may be a ground for the Supplier to seek an extension of time.

## 14. Notification of Claims

- To the extent permitted by Law, Siemens shall not be liable in respect of any Claim (whether in contract, tort, negligence at equity or otherwise) arising out of or in relation to the Agreement or the Work unless:
- 14.1. the Supplier has given Siemens notice in writing within 14 days of first becoming aware of the event or circumstances on which the Claim is based; and
  - 14.2. within 28 days of the cessation of the events or circumstances on which the Claim is based, the Supplier has provided a Claim.

## 15. Quality Assurance & Defects

- 15.1. The Supplier shall plan, establish and maintain a quality system which ensures conformance of the Work with the requirements of the Agreement. The Supplier shall provide Siemens with access to the quality systems of the Supplier and the Supplier's Personnel upon request by Siemens to enable Siemens to inspect, test and monitor the Supplier's compliance with the requirements of the Agreement. Without limiting any other provision of the Agreement, the Supplier shall comply with any specific quality management requirements of Siemens which are notified to it by Siemens from time to time.
- 15.2. Siemens and third parties authorised by Siemens, may upon giving the Supplier reasonable notice, inspect the Work being carried out by the Supplier or the Supplier's Personnel (at any stage of progress) at the Site and at the Facilities. As part of such inspections Siemens may (amongst other things):
- monitor compliance with applicable Laws;
  - review, inspect, examine and witness any scheduled testing of Products;
  - review the Supplier's progress against the Delivery Schedule (if any) and the Supplier's ability to meet the Date for Delivery;
  - inspect any test equipment used in measuring or testing Products at the scheduled time of testing for such Products; and
  - examine the production status and test the quality of Products.
- 15.3. The Supplier and the Supplier's Personnel shall provide all the requisite test and inspection equipment, devices and personnel required for the purposes of carrying out any Product quality tests and inspections (at the Supplier's cost). Siemens will use reasonable endeavours not to interfere with the day to day operations of the Supplier and the Supplier's Personnel while carrying out any of the tests and inspections under this clause 15.
- 15.4. The Supplier shall not be released from any of the Supplier's obligations arising out of or in relation to the Agreement by the fact that Siemens or third parties authorised by Siemens perform any quality reviews.
- 15.5. The Supplier shall agree the same quality assurance measures as set out in clauses 15.1 through 15.3 above with the Supplier's subcontractors and shall ensure that such subcontractors grant corresponding access, inspection, testing and monitoring rights to Siemens and third parties authorised by Siemens.
- 15.6. Siemens shall not be deemed to have accepted any Work until Siemens has had a reasonable time to inspect and perform tests, even if it has signed a delivery receipt or made any payment. Siemens may perform tests to confirm compliance of the Work with the Agreement. If such tests show that the Work does not materially conform to the requirements of the Agreement, Siemens reasonable costs of such testing shall be a debt due and owing by the Supplier to Siemens.
- 15.7. Siemens may direct the Supplier to rectify any Defects which occur during the Defects Liability Period by (at Siemens' option) either:
- repairing or replacing the defective Products; re-supplying the defective Services (or paying for the cost of the Products to be repaired or replaced or Services to be re-supplied) and correcting and supplying Siemens with all associated updated Documents; and
  - providing Siemens with any materials, parts, drawings, Documents and instructions necessary to correct or have corrected the Defect.
- 15.8. If Siemens makes a direction to rectify any Defects, the Supplier shall (at the Supplier's cost and without prejudice to any of Siemens' other rights and remedies) promptly:
- carry out the rectification to Siemens' satisfaction at times and in a manner causing as little inconvenience to Siemens as is reasonably possible;
  - commence and complete the rectification of Defects by the dates specified by Siemens, or if no timetable is provided by Siemens as soon as practicable after notification of the Defect by Siemens; and
  - dispose of rejected Products (or parts thereof) (if requested to do so by Siemens).
- 15.9. There shall be a further, separate defects liability period for the rectified Work equal in length to the Defects Liability Period (unless otherwise agreed between the Parties in writing) which shall commence upon the date of completion of the rectification and which shall be governed by this clause.
- 15.10. If the rectification is not commenced or completed by any dates specified by Siemens or otherwise in accordance with this clause 15, or if Siemens reasonably considers that the Defects are incapable of being rectified by the Supplier within the required time frame or at all, Siemens may at Siemens' option (without prejudice to any of Siemens' other rights and remedies):
- rectify the Defect or have the rectification carried out by others at the Supplier's cost; or
  - reject all or part of the Product or Services in which case:
    - the Supplier shall refund to Siemens any payments made by Siemens in respect of such rejected Product and Services;
    - the Supplier shall arrange for the removal of rejected Product (if any) at its cost within the reasonable period of time specified by Siemens; and
    - title and risk in rejected Product shall revert to the Supplier upon receipt by Siemens of the refund.
- 15.11. Upon request by Siemens, the Supplier shall indemnify Siemens from and against all Loss suffered and Claims incurred by Siemens and Siemens' Personnel (including payments required to be made to third parties) arising out of or in relation to a Defect and its rectification including additional labour costs (on a time and materials basis); costs associated with removing and returning defective Products; inspection, evaluation and testing costs; re-working and installation costs; additional transportation costs; and all other additional internal administration, processing and travel costs.
- 15.12. If Siemens exercises its right under this clause 15 to carry out or have others carry out any rectification work, the Supplier shall remain responsible for the Work in accordance with the Agreement.
- 15.13. Until Product Defects are rectified in full, the Supplier shall bear the risk of accidental loss, destruction or deterioration to such defective Product.
- 15.14. For a period of 2 years after expiry of the Defects Liability Period, the Supplier shall remedy all Latent Defects on the same terms and conditions as apply to the rectification of Defects during the Defects Liability Period.
- 15.15. If a Serial Defect is identified the Supplier shall, at Siemens' request, rectify the Serial Defect in all the Products affected by the Serial Defect in accordance with the defect provisions contained in this clause 15 (irrespective of whether the Serial Defect has manifested itself in all of the individual Products). The Parties shall use reasonable endeavours to ensure that repair or replacement is carried out at a time that will cause as little disruption as possible to Siemens and any person to whom the Products have been on-supplied (including where relevant taking into account any planned maintenance periods that may apply to the Products affected by the Serial Defect).
- 15.16. Within 42 days after the expiry of the last Defects Liability Period under the Agreement, Siemens' Representative shall notify the Supplier of the Date of Final Completion. The issue of such notice shall not prejudice any claim by Siemens or relieve the Supplier from any of its unfulfilled obligations or responsibilities including with respect to Latent Defects and Serial Defects.

## 16. Personnel and subcontracting

- 16.1. If requested to do so by Siemens, the Supplier shall provide Siemens with an up-to-date, detailed organisational chart showing the positions of key Supplier Personnel associated with the provision of the Work ("**Key Supplier Personnel**").
- 16.2. Siemens may request the Supplier to ensure that the Work under the Agreement is provided by particular Key Supplier Personnel. Siemens may require the Supplier to immediately replace any of the Key Supplier Personnel on reasonable grounds.
- 16.3. The Supplier shall use its best endeavours to:
- supply and retain the Key Supplier Personnel;
  - promptly inform Siemens if any of the Key Supplier Personnel cease or give notice of an intention to cease being engaged by the Supplier;
  - promptly replace any Key Supplier Personnel who cease being engaged by the Supplier with a person having the necessary skill, experience, expertise and qualifications to perform the Work;
  - ensure that appropriate Key Supplier Personnel attend meetings if requested to do so by Siemens.
- 16.4. The Supplier is responsible for supervising the Supplier's Personnel and bears the risk of any dispute, delay, disruption or inefficiency connected with or relating to any industrial action of any of the Supplier's Personnel where that action arises out of or in connection the Work under the Agreement or the way in which the Supplier conducts its business.
- 16.5. The Supplier shall not subcontract the whole or any part of the Work without obtaining the prior written consent of Siemens which consent may be provided or withheld by Siemens in its absolute discretion. The Supplier shall remain responsible for all acts, defaults, negligence and omissions of its subcontractors at all times and shall maintain and provide a list to Siemens of all approved subcontractors upon request by Siemens.

## 17. Relationship between the Parties

- 17.1. The relationship between the Parties is one of independent contractor at all times. Nothing in the Agreement is intended to:
- create an agency, partnership, joint venture or fiduciary relationship between Siemens and the Supplier; or
  - have the effect of making any of the Supplier's Personnel the employees of Siemens.
- 17.2. The Supplier shall pay all applicable salaries, leave entitlements, taxes (including payroll and PAYE taxes), superannuation and workers' compensation for the Supplier's employees.

- 17.3. The Supplier shall provide Siemens with all necessary information to enable Siemens to answer any enquiries made by the New Zealand authorities arising out of or in relation to the Agreement.
- 17.4. The Supplier shall provide satisfactory evidence to Siemens upon request of the Supplier's compliance with this clause 17.

## 18. Siemens' property

- 18.1. Siemens may from time to time supply goods and materials ("**Siemens Material**") to the Supplier to enable the Supplier and the Supplier's Personnel to perform the Work. Legal title to and property in all Siemens Material supplied by Siemens for the Work shall remain with Siemens and shall not pass to the Supplier under any circumstances. The Supplier shall only use the Siemens Material to perform the Work and for no other purpose and bears the risk of loss, damage or deterioration to it. The Supplier shall store and take appropriate care of the Siemens Material and compensate Siemens for all Loss sustained by Siemens if any Siemens Material is lost or damaged or deteriorates. The Supplier must deliver the Siemens Material to Siemens upon request by Siemens.
- 18.2. To the extent applicable, the Supplier consents to Siemens perfecting Siemens' interest in any goods provided by Siemens to the Supplier by registration under the PPSA and agrees to do anything reasonably requested by Siemens to enable Siemens to do so.
- 18.3. All drawings, specifications, information and samples provided by Siemens shall remain Siemens' sole and exclusive property and is deemed to be Confidential Information. Siemens makes no warranties regarding the accuracy of, and shall not be liable for, any defects, mistakes or inaccuracies in such documents, information or samples.

## 19. PPSA

The Supplier must:

- 19.1. not register or otherwise perfect or seek to perfect any Security Interest in or in connection with a Relevant PPSA Matter;
- 19.2. use best endeavours to ensure that no third party registers or otherwise perfects or seeks to perfect any Security Interest in or in connection with a Relevant PPSA Matter;
- 19.3. remove from, and use best endeavours to ensure third parties remove from, any relevant register any Security Interest in or in connection with a Relevant PPSA Matter that the Supplier or such other third party has previously registered; and
- 19.4. ensure all subcontracts (if any) entered into by the Supplier in connection with the Work have, for the benefit of Siemens, a clause that reflects this clause 19.

## 20. Confidentiality

20.1. The Supplier shall:

- (a) keep confidential, and not use, access, copy or disclose any Confidential Information except as permitted by this clause 20 or otherwise consented to by Siemens in writing; and
- (b) immediately notify Siemens if the Supplier becomes aware of any loss or unauthorised use, access, copying, disclosure or publication of any Confidential Information.

20.2. The Supplier may, to the extent necessary, use Confidential Information for the purposes of performing its obligations or exercising its rights arising under the Agreement.

20.3. The Supplier may disclose Confidential Information to the Supplier's Personnel who have a specific need to access that Confidential Information for the purposes of enabling the Supplier to perform its obligations or exercise its rights arising under the Agreement provided that:

- (a) the Supplier's Personnel have first been made aware of the terms upon which the Confidential Information has been disclosed to the Supplier and a duty to handle such Confidential Information in confidence is imposed upon the Supplier's Personnel;
- (b) the Supplier ensures that the Supplier's Personnel comply with the terms of this clause as if they were parties to the Agreement; and
- (c) any breaches of this clause 19 by the Supplier's Personnel shall be deemed to be breaches by the Supplier.

20.4. The confidentiality obligations in this clause 19 do not apply to Confidential Information which:

- (a) is or becomes public knowledge other than as a result of a breach of confidence;
- (b) is lawfully obtained by the Supplier from a third party without any confidentiality obligation (other than as a result of a breach of confidence);
- (c) is independently developed by the Supplier without reference to any obtained Confidential Information; or
- (d) the Supplier is required to disclose to comply with any applicable Law, legally binding court order, request by a governmental agency or under the rules of a stock exchange.

20.5. The burden of proving that Confidential Information falls within an excluded category in clause 20.4 rests with the Supplier.

20.6. If any Laws require that Confidential Information be passed on to public bodies for the purpose of obtaining approvals and permits, the Supplier shall do everything reasonably within the Supplier's power to ensure that such Confidential Information is also treated confidentially by such public bodies.

20.7. Siemens may at any time request the Supplier to either destroy or return to Siemens all Confidential Information received from Siemens. The Supplier shall destroy or return the Confidential Information (and all copies of such Confidential Information) to Siemens within 14 days after receipt of Siemens' request.

20.8. The duty to maintain secrecy shall survive the expiration or earlier termination of the Agreement.

## 21. IP Rights

21.1. Except to the extent otherwise agreed between Siemens and the Supplier in writing, nothing in the Agreement operates to transfer ownership of any Background IP Rights from either Party or any third party to the other Party. All such Background IP Rights are and remain owned by the relevant Party or third party. The Supplier grants Siemens an irrevocable, non-exclusive, transferable, royalty-free licence to use Background IP Rights in connection with the Work and for the use, repair, maintenance, upgrade or modification of Products.

21.2. Unless otherwise agreed by the Parties in writing and subject to clause 20.1, the Supplier:

- (a) assigns to Siemens free from all encumbrances all IP Rights specifically created by the Supplier or the Supplier's Personnel for Siemens in connection with the Work; and
- (b) acknowledges that by virtue of this clause all such IP Rights vest in Siemens upon their creation,

and the Supplier shall, at its cost, do all things reasonably requested by Siemens to enable Siemens to assure further the rights assigned under this clause including executing (and procuring the Supplier's Personnel to execute) any formal assignment or other documents required to give effect to this clause and to provide all reasonable assistance to Siemens to protect Siemens' interests.

21.3. The Supplier must disclose to Siemens any significant material which the Supplier and/or the Supplier's Personnel create in the course of providing the Work at the time of its creation.

21.4. The Supplier warrants that the Products and Documents supplied to Siemens under the Agreement will not infringe any IP Rights (including any author's moral rights under the *Copyright Act 1994*) and will not result in any royalties, fees or other amounts (not agreed to by Siemens) becoming payable for or relating to the use of such IP Rights.

21.5. The Supplier represents and warrants that Products do not contain any Open Source Software other than as disclosed by the Supplier to Siemens in accordance with this clause. If any Products contain Open Source Software, the Supplier (prior to accepting the Purchase Order) shall deliver to Siemens:

- (a) a list of all Open Source Software to be provided by the Supplier (indicating the correct version number) and the relevant Open Licence Terms;
- (b) a complete copy of all Open Licence Terms; and
- (c) the source code and build scripts for each version of the relevant Open Source Software to be provided to Siemens (insofar as the applicable Open Licence Terms require such disclosure).

21.6. Siemens' use of material provided by the Supplier under the Agreement includes Siemens' right to reproduce, publish, copy, adapt, communicate to the public, destroy or in any way change the materials (or any part):

- (a) with or without attribution of authorship;
- (b) in any medium; and
- (c) in any context and in any way it deems fit.

21.7. The Supplier warrants that:

- (a) the Supplier has the authority to grant the rights granted under this clause 21; and
- (b) the possession and use of the Products by Siemens in accordance with the Agreement shall not infringe any third party's IP Rights (including any author's moral rights under the *Copyright Act 1994*) and will not result in any royalties, fees or other amounts (not agreed to by Siemens) becoming payable for or relating to the use of such IP Rights.

21.8. The Supplier shall indemnify Siemens and Siemens' Personnel against any Claims and Loss incurred by Siemens or Siemens' Personnel arising out of or in relation to any actual or alleged infringement of a third party's IP Rights. The Supplier shall at Siemens' option and at the Supplier's expense either replace such infringing Product with a non-infringing Product, or modify such Product so as to render it to be non-infringing (in either case, to deliver the same functionality and performance as the infringing part), or procure for Siemens the right to use such Product.

21.9. The Supplier warrants that:

- (a) the Supplier has the authority to grant the rights granted under this clause 21; and
- (b) the possession and use of the Products and Documents by Siemens in accordance with the Agreement shall not infringe any third party's IP Rights.

21.10. Siemens shall inform the Supplier if any third party brings a Claim against Siemens alleging breach of any third party's IP Rights arising out of or in relation to Siemens' possession or use of the Products.

## 22. Indemnity and Liability

22.1. The Supplier releases and indemnifies Siemens and Siemens' Personnel ("**Indemnified Parties**") from and against all Loss and Claims, suffered or incurred by the Indemnified Parties to the extent caused or contributed to by

- (a) the performance or non-performance of the Work or any act, omission or negligence by the Supplier or the Supplier's Personnel; or
- (b) any Claim by a third party arising out of or in connection with the performance or non-performance of the Work or any act, omission or negligence by the Supplier or the Supplier Personnel

including any Loss or Claim arising out of:

- (i) breach of contract or warranty;
- (ii) breach of any Laws;
- (iii) personal injury, disease, illness and/or death;
- (iv) loss of or damage to property;
- (v) tort (including negligence), fraudulent or wilful misconduct; or
- (vi) breach of confidentiality, infringement of third party IP Rights or infringement of any author's moral rights

but the indemnity shall be reduced proportionately to the extent that the Loss or Claim by the Supplier or the Supplier's Personnel was caused by the negligence of the Indemnified Parties.

22.2. The indemnity in clause 22.1 shall survive the expiration or earlier termination of the Agreement.

22.3. Except to the extent that liability cannot be legally limited or excluded:

- (a) Siemens' total liability arising out of or in relation to the Agreement shall not exceed the Agreed Price; and
- (b) Siemens shall not be liable for indirect or consequential loss or damage, economic loss, loss of profit, loss of revenue, loss of contract, loss of production or production stoppage, or loss of data

and this limitation and exclusion of liability applies whether the liability claim is based upon breach of contract, tort (including negligence), under a warranty or an indemnity, under statute, in equity or otherwise

## 23. Insurance

23.1. Before commencing any Work under the Agreement, the Supplier shall effect with a reputable insurer all insurances to adequately cover the Supplier and the Supplier's Personnel under the Agreement, including:

- (a) a public and products liability policy which provides coverage for an amount in respect of any one occurrence of not less than NZD 10 million per occurrence or such other amount as agreed in writing between the Parties;
- (b) a contract works insurance policy covering loss of or damage to the Work (if any Work will be performed on Site);
- (c) if the Work includes any consulting or design, a professional indemnity insurance policy for an amount of not less than NZD 5 million per occurrence, to be maintained for 6 years following the Date of Final Completion or such other amount and time period as may be agreed in writing between the Parties;
- (d) comprehensive motor vehicle insurance in respect of any vehicle used by the Supplier and the Supplier's Personnel in performing the Work;
- (e) workers' compensation insurance covering the Supplier's legal liability to persons engaged by the Supplier to perform the Work; and
- (f) any other insurance which is required by Law to be effected in the location where the Work is to be performed.

23.2. The public and products liability policy and the contract works policy (if any) must name Siemens as an additional insured and include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured.

23.3. All insurance policies shall be on terms and with an insurer reasonably acceptable to Siemens. The Supplier shall provide Siemens with certificates of currency evidencing the above insurance requirements and details of the insurance cover before commencing any Work under the Agreement and at other times within 5 Business Days after receiving a request from Siemens to do so.

23.4. Without prejudice to any other rights or remedies, if the Supplier fails to take out and maintain the required insurances, Siemens may effect them and the cost of such insurance shall become a debt due and payable from the Supplier to Siemens and may be recovered by Siemens under clause 8.8. Siemens may withhold payment until evidence of insurance is provided by the Supplier in accordance with this clause 23.

## 24. Termination

24.1. If the Supplier:

- (a) breaches clause 3.5 or clause 3.13 of these Conditions;
- (b) commits an irremediable breach and/or any persistent breach of the Agreement;
- (c) does not remedy any other breach of the Agreement within 14 days of receiving a notice of breach requesting remedy of same;
- (d) becomes unable to pay the Supplier's debts as and when they fall due, becomes bankrupt or has an administrator; controller; liquidator; provisional liquidator; mortgagee in possession;

receiver; receiver and manager; or other like officer appointed to it or over some or all of its assets or undertaking or experiences any analogous event having a substantially similar effect; or

- (e) experiences a substantial change to its legal or financial status, ownership structure, shareholders or management (which in Siemens' opinion makes it unreasonable to expect Siemens to remain bound by the Agreement),

then Siemens may, at its option and without prejudice to any other rights it may have, by notice in writing terminate the Agreement in whole or part with immediate effect and retain or enforce any Security given under it. Siemens may apply such Security to any Loss incurred by Siemens arising out of or in relation to such termination. The Supplier shall immediately refund any amounts paid by Siemens in respect of Work not yet performed under the terminated Agreement and, if requested to do so by Siemens, shall deliver to Siemens any Work completed in accordance with the Agreement, as at the date of termination (subject only to payment of agreed costs, or failing agreement, direct costs and normal overheads for such Work).

24.2. Siemens may terminate the Agreement at any time, for convenience, in whole or part, by providing at least 14 days' written notice to the Supplier and may thereafter either by itself or by a third party complete the uncompleted part of the Work under the Agreement. In the event of termination for convenience under this clause, the Supplier shall be entitled to payment of the following amounts, as its sole entitlement for compensation arising out of or in relation to such termination:

- (a) the unpaid value of Work completed in accordance with the Agreement prior to the date of termination;
- (b) any pre-approved expenses already incurred by the Supplier prior to the date of receipt of the notice of termination; and
- (c) the cost of goods or materials reasonably ordered by the Supplier for the Work for which the Supplier is legally bound to accept and pay, (subject to clear title and possession of such goods and materials being transferred to Siemens upon payment),

but in no event shall such amounts exceed the Agreed Price that would have otherwise been paid to the Supplier under the Agreement but for Siemens' termination and Siemens shall have no further liability to the Supplier in respect of the termination.

24.3. If the Agreement is terminated by Siemens:

- (a) the Supplier must immediately return all of the Siemens Material and Siemens' Confidential Information to Siemens; and
- (b) any Security held by Siemens under the Agreement may be retained by Siemens until all of the Supplier's obligations are fulfilled and may also be applied against any Loss suffered by Siemens as a result of a breach by the Supplier.

## 25. Dispute Resolution

25.1 If any dispute or difference occurs between the Parties arising out of or in relation to the Agreement ("**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**").

25.2 Upon the giving of a Notice of Dispute, the following shall apply:

- (a) the Dispute shall be submitted for negotiation by the management representatives of the Parties who have the authority to resolve the Dispute;
- (b) if within 14 days of the giving of the Notice of Dispute, the Dispute has not been resolved between the appointed management representatives to the satisfaction of both Parties, the Dispute may be referred by either Party to the respective Chief Executive Officers of the Parties or their respective senior management delegates who have the authority to resolve the Dispute.
- (c) if within 28 days of the giving of the Notice of Dispute, the Dispute has not been resolved, then either Party may submit the Dispute to arbitration in accordance with the *Arbitration Act 1996* (excluding clauses 4 and 5 of the Second Schedule) by one arbitrator who shall be a lawyer and who shall make a decision based on legal substance; and
- (d) if the Parties fail to agree upon the appointment of an arbitrator within 42 days of the giving of the Notice of Dispute, the appointment will be made by the by the President for the time being of the Auckland District Law Society or the President's nominee (unless otherwise agreed by the Parties).

25.3 The award of the arbitration shall be final and binding on both Parties in accordance with the applicable legislation applying to Commercial Arbitrations and judgment may be entered in any court having jurisdiction.

25.4 A reference to arbitration under this clause shall not relieve the Supplier of any obligations under the Agreement, 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 Agreement will be maintained.

25.5 Unless otherwise agreed between the Parties, the seat of Arbitration shall be Auckland, New Zealand. The language to be used in the arbitration shall be English.

- 25.6 Nothing in this clause shall prejudice the right of a Party to seek urgent injunctive or declaratory relief in respect of a Dispute under this clause 25 or any matter arising out of or in connection with the Agreement.
- 26. Occupational Health, Safety and the Environment**
- 26.1 The Supplier is responsible for the management of health, safety and environmental issues during its performance of the Agreement. The Supplier shall take all reasonable precautions to protect persons and the environment and without limiting the foregoing shall comply with and ensure that the Supplier's Personnel comply with all applicable Laws relating to health, safety and the environment.
- 26.2 Without limiting any other provision or obligation under the Agreement, the Supplier shall use its best endeavours to ensure that workplaces (including the Facilities) used to perform any part of the Work are safe, adequately managed and to the extent reasonably practicable, are free from risks to health, safety and the environment. In doing so, the Supplier shall ensure that:
- it has implemented a safety and environmental management system complying with AS/NZS 4801:2001 and AS/NZS ISO14001:2004 respectively (or an equivalent standard);
  - it prepares all applicable safe work method statements for the Work which describe how the Work is to be performed and equipment used and which identify; (i) the Work activities assessed as having safety and environmental risks and the control measures that will be applied to such risks; (ii) the standards or codes to be complied with; (iii) the qualifications of the Supplier's Personnel required to do the Work; and (iv) the training required to do the Work;
  - the Work is adequately supervised at all times to ensure workplace health and safety and protection of the environment;
  - all of the Supplier's Personnel under the Supplier's control are qualified, have undertaken the relevant training for the Work and hold relevant current qualifications, licences, permits, authorisations, competencies and certifications in accordance with applicable Laws;
  - all Supplier Personnel are provided with all relevant information, tools, plant, equipment and instruction to ensure safe performance of the Work;
  - all plant, equipment and substances used in performing the Work are safe and limit, as far as reasonably practicable, risks to health, safety and the environment (when properly used);
  - it conducts its operations in a manner that protects the environment and prevents pollution;
  - to the extent reasonably practicable, it avoids the use of environmentally harmful materials or substances (and if such use is unavoidable, it stores, uses and disposes of the same in accordance with the Law);
  - it notifies Siemens if the Supplier considers that more environmentally friendly materials, packaging or methods of manufacture exist; and
  - it complies with all Siemens' Policies concerning the declaration of substances.
- 26.3 The Supplier must comply with all of Siemens' health, safety and environmental Policies.
- 26.4 Siemens may, upon reasonable notice to the Supplier, review the Supplier's compliance with this clause 26 and the Supplier shall co-operate with any reasonable requests of Siemens in connection with such review. If requested by Siemens, the Supplier shall provide written certification to Siemens that it has complied with this clause 26.
- 26.5 If the Supplier is supplying any Products, which:
- are subject to substance restrictions and/or information requirements imposed by applicable Law (eg REACH and RoHS); or
  - are or contain substances that Siemens requires to be declared, the Supplier shall declare such substances in the web database BOMcheck (www.BOMcheck.net) or in another reasonable format provided by Siemens no later than the first Date of Delivery of such Products.
- 26.7 If requested by Siemens acting reasonably, the Supplier shall act as the *principal contractor* (as that term or its equivalent is used in the relevant work health and safety Laws in New Zealand), at a Site in which case the Supplier must comply with the following:
- complete all forms and attend to all statutory requirements to ensure that it is appointed as the *principal contractor*;
  - pay all fees and charges payable under the applicable health and safety Laws in connection with the execution and performance of the Work;
  - comply with its obligations as *principal contractor* at the Supplier's own cost; and
  - accept that it is the person responsible for the Work and is doing or causing to be done, all of the Work at the Site for the purposes of the applicable health and safety Laws.
- 27. Corporate Responsibility in the Supply Chain**
- 27.1 The Supplier shall comply with the principles and requirements of the 'Code of Conduct for Siemens Suppliers and Third Party Intermediaries' set out in the Annexure to these Conditions ("**Code of Conduct**").
- 27.2 If requested by Siemens, the Supplier shall not more than once a year (at the Supplier's option) provide Siemens with either:
- a written corporate responsibility self-assessment in the form provided by Siemens; or
  - a written report approved by Siemens describing the actions taken or to be taken by the Supplier to ensure compliance with the Code of Conduct.
- 27.3 Siemens and its authorised agents and representatives and/ or a third party appointed by Siemens and reasonably acceptable to the Supplier may conduct inspections (including at the Supplier's Facilities) in order to verify the Supplier's compliance with the Code of Conduct. Any inspection may only be conducted upon prior written notice by Siemens, during regular business hours, in accordance with applicable Privacy Laws and data protection laws and shall not unreasonably interfere with the Supplier's business activities or violate any of the Supplier's confidentiality agreements with third parties. The Supplier shall reasonably co-operate in any inspections conducted. Each Party shall each bear its own expenses in connection with such inspections.
- 27.4 In addition to other rights and remedies Siemens may have and without limiting clause 24, and without liability to the Supplier, Siemens may terminate the Agreement by giving written notice to the Supplier with effect from the date specified in the termination notice if the Supplier breaches this clause 27. Siemens will not exercise its right to terminate for breach of clause 27.2 or 27.3 unless Siemens has first notified the Supplier of the breach and has given the Supplier a reasonable opportunity to remedy the breach.
- 28. Security in the Supply Chain**
- 28.1 The Supplier shall take all necessary measures to ensure security in the supply chain in accordance with the requirements of internationally recognised initiatives based on the WCO SAFE Framework of Standards (eg AEO, C-TPAT) (including implementing measures to ensure the security of: (a) all premises used in connection with the Work; (b) packaging; (c) transportation; (d) information; and (e) the Supplier's Personnel).
- 28.2 The Supplier shall protect the Products to be supplied under the Agreement against unauthorised access and manipulation.
- 28.3 The Supplier shall only engage reliable Personnel to supply the Work and shall ensure that all of the Supplier's Personnel effect equivalent security measures.
- 28.4 Without prejudice to Siemens' other rights and remedies, Siemens may terminate the Agreement (and cancel any associated Purchase Order) without liability if the Supplier breaches this clause 28 and the Supplier has not remedied the breach after having been given a reasonable period of time to remedy same.
- 29. Force Majeure**
- 29.1 If a Force Majeure Event prevents a Party from complying with any of its obligations under the Agreement, then it shall notify the other Party of that Force Majeure Event and shall specify the obligations which are or will be prevented from being performed. The notice shall be given within 14 days after the Party became aware (or should have become aware) of the Force Majeure Event.
- 29.2 Once a Party has notified the other Party in accordance with clause 29.1, it shall be excused from performing the affected obligations for so long as the Force Majeure Event prevents it from performing them.
- 29.3 Each Party shall:
- at all times use all reasonable endeavours to minimise any delay in the performance of the Agreement arising as a result of a Force Majeure Event; and
  - notify the other Party when it ceases to be affected by a Force Majeure Event.
- 29.4 If a Force Majeure Event prevents a Party from complying with its obligations for more than 6 months, either Party may terminate the Agreement by notice to the other Party. The accrued rights and remedies of each Party will not be affected by such termination.
- 30. Notices**
- 30.1 Any formal notice or demand ("**Notice**") to be given or made under the Agreement:
- must refer to the Agreement and state the clause under which the Notice is given; and
  - must be given in writing and be delivered to the intended recipient by pre-paid post or by hand to the registered address of the recipient (or to such other address as notified by a Party to the other in accordance with this clause) and in the case of Notices to Siemens, must be directed to the attention of the Siemens Contact person specified in the Purchase Order. Siemens may also deliver a Notice to the Supplier by pre-paid post or hand delivery to the Supplier's Representative.
- 30.2 Day-to-day communications may be made between Siemens and the Supplier by email.
- 30.3 Any Notice will be deemed to be delivered:
- if delivered in person, at the time of delivery; and
  - if delivered by pre-paid 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).

- 30.4 If a Notice is delivered or deemed to have been delivered on a day which is not a Business Day in the place to which the Notice is sent or is later than 4.00 pm (local time), it will be taken to have been delivered at 9.00 am (local time) on the next Business Day in that place.

## 31. General

- 31.1 The Agreement may only be varied or amended in writing signed by both Parties.
- 31.2 If the whole or any part of the Agreement is or becomes or is held to be illegal invalid or unenforceable, then the whole and each part of the clauses of the Agreement shall (to the extent necessary to avoid such illegality invalidity or unenforceability) be interpreted read down or severed without affecting the operation of the remaining clauses.
- 31.3 The Supplier shall not, without the prior written consent of Siemens, assign or otherwise transfer the Agreement (or any part of it) to a third party. A change in control of the shareholding of the Supplier will be a deemed assignment for the purposes of this clause. Siemens may at any time assign or otherwise transfer the Agreement (or any part of it) and must, within a reasonable time after such assignment or transfer notify the Supplier.
- 31.4 Unless otherwise agreed between the Parties, the Agreement shall be governed by and construed in accordance with the laws of New Zealand. Subject to clause 25, the Parties irrevocably submit to the exclusive jurisdiction of the courts of New Zealand.
- 31.5 Unless otherwise provided in the Agreement, the rights, powers and remedies provided to Siemens under the Agreement are cumulative with and not exclusive of the rights, powers or remedies independently provided by Law.
- 31.6 The provisions of the Agreement (and to the extent permitted by Law each Security Interest) remaining to be performed or capable of having effect after termination or expiry remain in full force and effect notwithstanding such termination or expiry. Termination or expiry of the Agreement (however occurring) shall be without prejudice to any rights or obligations of the Parties arising on or prior to the date of termination or expiry.
- 31.7 Any consent or approval of Siemens required under the Agreement may be given or withheld by Siemens in its absolute discretion unless the Agreement states otherwise. Siemens may impose conditions upon the grant of any such consent or approval.
- 31.8 The Agreement constitutes the entire agreement between the Parties as to its subject matter and the Parties acknowledge that there are no other understandings, agreements, or representations whether express or implied in any way relating to its subject matter.
- 31.9 No right under the Agreement shall be deemed to have been waived by Siemens unless the waiver is in writing. Any such waiver will not prejudice Siemens' rights in respect of any subsequent breach by the Supplier.
- 31.10 Subject to any contrary provisions in the Agreement, the Agreement shall be binding upon respective successors, substitutes and permitted assigns of the Parties.
- 31.11 The Supplier shall not make or cause to be made any public announcement or provide any information to the media of, or in relation to the Agreement without the prior written consent of Siemens (except as required by Law or by the rules of any recognised stock exchange to which the Supplier or a Related Company of the Supplier is subject, in which case the Supplier shall first give Siemens a reasonable opportunity to review such announcement or information). The Supplier shall notify Siemens immediately if the Supplier or any of the Supplier's Personnel are contacted by any media representative in relation to any aspect of the Agreement (including the Work supplied under it).
- 31.12 If a payment or any other act is required to be made or done on a day which is not a Business Day, the payment or act shall be made or required to be made on the next Business Day.
- 31.13 The Supplier shall promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by the Agreement.
- 31.14 Each Party shall pay its own legal costs of or incidental to the negotiation of the Agreement.
- 31.15 The Purchase Order may include or refer to special conditions which override, exclude or modify these Conditions. If there is any ambiguity or inconsistency between any constituent parts of the Agreement, the following order of precedence shall apply to resolve the ambiguity or inconsistency: (a) any special conditions contained or referred to in the Purchase Order; (b) the other terms of the Purchase Order; (c) these Conditions; and (d) all other documents attached by Siemens or which Siemens agrees are incorporated into the Agreement by reference (with (a) having the highest priority).



## Code of Conduct for Siemens Suppliers and Third Party Intermediaries

This Code of Conduct defines the basic requirements placed on Siemens' suppliers and third party intermediaries concerning their responsibilities towards their stakeholders and the environment. Siemens reserves the right to reasonably change the requirements of this Code of Conduct due to changes of the Siemens Compliance Program. In such event Siemens expects the supplier to accept such reasonable changes.

The supplier and/or third party intermediary declares herewith:

- **Legal compliance**
  - to comply with the laws of the applicable legal systems.
- **Prohibition of corruption and bribery**
  - to tolerate no form of and not to engage directly or indirectly in any form of corruption or bribery and not to grant, offer or promise anything of value to a government official or to a counterparty in the private sector to influence official action or obtain an improper advantage.
- **Fair competition, anti-trust laws and intellectual property rights**
  - to act in accordance with national and international competition laws and not to participate in price fixing, market or customer allocation, market sharing or bid rigging with competitors;
  - to respect the intellectual property rights of others.
- **Conflicts of interest**
  - to avoid all conflicts of interest that may adversely influence business relationships.
- **Respect for the basic human rights of employees**
  - to promote equal opportunities for and treatment of its employees irrespective of skin color, race, nationality, social background, disabilities, sexual orientation, political or religious conviction, sex or age;
  - to respect the personal dignity, privacy and rights of each individual;
  - to refuse to employ or make anyone work against his will;
  - to refuse to tolerate any unacceptable treatment of employees, such as mental cruelty, sexual harassment or discrimination;
  - to prohibit behavior including gestures, language and physical contact, that is sexual, coercive, threatening, abusive or exploitative;
  - to provide fair remuneration and to guarantee the applicable national statutory minimum wage;
  - to comply with the maximum number of working hours laid down in the applicable laws;
  - to recognize, as far as legally possible, the right of free association of employees and to neither favor nor discriminate against members of employee organizations or trade unions.
- **Prohibition of child labor**
  - to employ no workers under the age of 15 or, in those countries subject to the developing country exception of the ILO Convention 138, to employ no workers under the age of 14.
- **Health and safety of employees**
  - to take responsibility for the health and safety of its employees;
  - to control hazards and take the best reasonably possible precautionary measures against accidents and occupational diseases;
  - to provide training and ensure that employees are educated in health and safety issues;
  - to set up or use a reasonable occupational health & safety management system<sup>1)</sup>.
- **Environmental protection**
  - to act in accordance with the applicable statutory and international standards regarding environmental protection;
  - to minimize environmental pollution and make continuous improvements in environmental protection;
  - to set up or use a reasonable environmental management system<sup>1)</sup>.
- **Supply chain**
  - to use reasonable efforts to promote among its suppliers compliance with this Code of Conduct;
  - to comply with the principles of non discrimination with regard to supplier selection and treatment.
- **Conflict Minerals**
  - to take reasonable efforts to avoid in its products the use of raw materials which directly or indirectly finance armed groups who violate human rights

<sup>1)</sup> For further information see [www.siemens.com/procurement/cr/code-of-conduct](http://www.siemens.com/procurement/cr/code-of-conduct)