

1. GENERAL PROVISIONS

1.1 Legal relations ("Contract") between Siemens Malaysia Sdn Bhd (93008-X) ("SMSB") and the party for whom the products and services is supplied to ("Customer") in connection with the supply of products/goods ("Products" or "Goods") and/or services ("Services") of SMSB ("Products" and "Services" collectively as "Supplies") shall be solely governed by these General Conditions ("GC") and such other written agreements as entered into between SMSB and the Customer. The Customer's general terms and conditions shall apply only if expressly accepted by SMSB in writing. The scope, specifications, quality and terms & conditions related to the Supplies shall be solely determined by the Contract. This GC shall form an integral part of the Contract. The Customer's purchaser order/award of contract is subject to SMSB's order confirmation/written acceptance ("Order Confirmation"). Such Order Confirmation is subject to the successful completion of credit assessment by SMSB on the Customer.

SMSB and the Customer shall be referred to as "Parties" collectively and "Party" individually in this GC.

1.2 In the event of any inconsistency or variance between the provisions of the documents forming part of the Contract, the terms and conditions shall take precedence in the following order of priority:

- any written agreement accepted by both Parties to override any provisions contained in the documents listed below;
- quotation/offers issued by SMSB ("Quotation") including its attachments, annexes or appendices;
- Special or Specific Conditions, if any; and
- this GC.

1.3 A Contract may be cancelled, varied or suspended only by notice in writing and only if such notice is accepted in writing by SMSB. In the event of such cancellation, variation or suspension, the Customer shall compensate SMSB for any costs or loss incurred including but not limited to loss of profit.

2. COMPLIANCE WITH LAWS & EXPORT CONTROL REGULATIONS

2.1 Each Party shall strictly comply with all applicable laws including anti-corruption laws.

2.2 In the absence of agreement to the contrary, it shall be the Customer's responsibility to obtain and provide any approvals, licences or permits necessary for the performance of the Contract. Upon request, the Customer shall furnish to SMSB information or documentation of the Customer's compliance, as well as to any other information or documentation required to enable SMSB to comply with any laws, rules, regulations and requirements applicable to the performance of the Contract.

2.3 SMSB shall not be obligated to fulfill the Contract if such fulfilment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.

2.4 The Parties undertake to comply with all applicable export control regulations of the national authorities and the authorities in Malaysia, in the Federal Republic of Germany, in the European Union and in the United States of America. Upon request by SMSB, the Customer shall provide SMSB with all information pertaining to the end customer, destination and intended use of the Supplies, as well as any existing export control restrictions regarding the Supplies to enable SMSB conducting export control checks.

2.5 If the Customer transfers goods (hardware and/ or software and/ or technology) as well as corresponding documentation, regardless of the mode of provision) delivered by SMSB or works and services (including all kinds of technical support) performed by SMSB to a third party, the Customer shall comply with all applicable national and international (re-) export control regulations. In any event of such transfer of goods, works and services the Customer shall comply with the (re-) export control regulations of Malaysia, the Federal Republic of Germany, of the European Union and of the United States of America.

2.6 Prior to any transfer of goods, works and services provided by SMSB to a third party the Customer shall in particular check and guarantee by appropriate measures that

- There will be no infringement of an embargo imposed by Malaysia, the European Union, by the United States of America and/ or by the United Nations by such transfer, by brokering of contracts concerning those goods, works and services or by provision of other economic resources in connection with those goods, works and services, also considering the limitations of domestic business and prohibitions of by-passing those embargoes;
- Such goods, works and services are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless required authorization is provided;
- The regulations of all applicable Sanctioned Party Lists of Malaysia (if any), the European Union and the United States of America concerning the trading with entities, persons and organizations listed therein are considered.

2.7 If required to enable authorities or SMSB to conduct export control checks, the Customer, upon request by SMSB, shall promptly provide SMSB with all information pertaining to the particular end customer, the particular destination and the particular intended use of goods, works and services provided by SMSB, as well as any export control restrictions existing.

2.8 The Customer shall indemnify and hold harmless SMSB from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any non compliance with export control regulations by the Customer, and the Customer shall compensate SMSB for all losses and expenses resulting thereof.

2.9 Goods labelled with "AL" not equal to "N" are subject to European and German export authorization when being exported out of the EU. Goods labelled with "ECCN" not equal to "N" are subject to US re-export authorization. Even without a label, or with label "AL:N" or "ECCN:N", authorization may be required due to the final end-use and destination for which the goods are to be used.

3. PRICES

Unless otherwise agreed in writing, the following shall apply:

3.1 SMSB's Quotation shall remain valid for the period stated in the Quotation (and any extended period subsequently agreed to by SMSB in writing); or when no such period is stated, for thirty (30) days from the date of the Quotation.

3.2 Total Prices agreed to as a consideration of the Contract ("Contract Price"), shall be in Ringgit Malaysia, on the basis of "ex works" (Incoterms 2010) or such other currency or Incoterms 2010 as stated in SMSB's Quotation, and shall exclude packaging and any indirect taxes including but not limited to: property, licence, sales, value added or similar taxes and duties applicable to the Supplies. The Customer agrees to pay or reimburse SMSB for any such taxes, which SMSB or its subcontractors are required to pay.

3.3 The Contract Price is based on the scope referred to in the Quotation. Should there be a variation in the scope ordered from that offered, SMSB reserves the right to amend the Contract Price accordingly.

3.4 The Contract Price offered is based on the costs of material, labour, freight, insurance, exchange rates, custom duties and taxes and other costs and charges as are applicable as of the date of Quotation ("Reference Date"). SMSB reserves the right to amend the Contract Price in the event of any changes in such costs after the Reference Date.

3.5 If after the Reference Date the costs to SMSB of performing its obligations under the Contract is varied by reason of the making or amendment of any laws, orders, regulations, by-laws or other government instruments having the force of law, the amount of such variation shall be added to or deducted from the Contract Price, whichever the case may be.

3.6 In particular, the Contract Price is exclusive of any applicable sales tax, service tax, goods and service tax or other similar taxes which may be imposed from time to time ("SST or Similar Taxes"). If the consideration (including reimbursement of expenses, if any) is subject to SST or Similar Taxes in Malaysia, the Customer shall additionally pay such amounts. For the avoidance of doubt, in the event that SMSB has not indicated and charged the SST or Similar Taxes in any issued invoice, the Customer shall additionally pay such amounts upon receipt of the amended invoice from SMSB.

3.7 The Contract Price shall be net of any withholding tax payable by the Customer to the applicable tax authorities, and in no event shall the Customer be entitled to withhold or deduct any such taxes from the Contract Price.

3.8 If SMSB is required to undertake assembly or erection works and unless otherwise agreed, the Customer shall pay, in addition to the Contract Price, all the incidental costs including but not limited to travel expenses, accommodation expenses and daily allowances.

3.9 Products to be delivered will be packed in accordance with SMSB's customary standard of packing and the cost thereof will be included in the Contract Price. Any special packing, either required by the Customer or necessary due to delivery being delayed or interrupted for reasons beyond SMSB's reasonable control, will be charged to the Customer separately. Upon the Customer's request, SMSB shall insure the Supplies against the usual risks of transport at the Customer's expense to be reimbursed separately to SMSB.

4. TERMS OF PAYMENT

4.1 Unless otherwise agreed or stated in SMSB's Quotation, all invoices from SMSB are due and payable immediately from the date of each invoice. Payment is considered as made when the money has been credited to designated SMSB's bank account and such payment is to be made free of/without any deduction including but not limited to withholding taxes.

4.2 If the Customer does not pay within the agreed time, a default interest charge shall be applicable without specific reminder, calculated from the due date of the invoice at the rate of 1% per month on the outstanding sum.

4.3 The Customer shall comply with the dates of payment even if transportation, delivery, erection, commissioning or acceptance or otherwise of the Supplies are delayed or prevented for reasons beyond the control of SMSB. The Customer is not entitled to withhold, set off or reduce payments unless it is specifically agreed to by SMSB in writing.

5. TITLE

5.1 Title to ordered Products ("Retained Goods" in this Section) shall remain SMSB's property and only pass to the Customer upon full payment of each and every claim SMSB has against the Customer under the Contract.

5.2 Prior to the transfer of title, the Customer may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.

5.3 After delivery but prior to the transfer of title, the Customer shall, at its expense, take out necessary insurance to protect the Retained Goods against theft, total

loss, fire, water and other risks and take all further measures in order to ensure that SMSB's title is not prejudiced.

- 5.4 The Customer shall inform SMSB immediately in writing of any seizure or other act of intervention by third parties which may result in SMSB losing title to or security interest in the Supplies.
- 5.5 Where the Customer fails to fulfill its duties, or fails to effect payment upon payment due date in accordance with the terms of payment stated in Section 4 above, or otherwise violates its obligations under this GC and/or the Contract, and after the lapse of a reasonable cure period which has been given to the Customer to rectify the breach in writing, SMSB shall be entitled to terminate the Contract for the supply of the Retained Goods and take back the Retained Goods. The Customer shall be obliged to return the Retained Goods and render all necessary assistance including allowing the entry of the employees and/or agents of SMSB into any and all premises where the Retained Goods are kept so as to facilitate the retaking of possession by SMSB of the Retained Goods.

6. PASSING OF RISK

- 6.1 Risk of loss and damage to the Products shall pass to the Customer at the contractual point of delivery in accordance with the applicable Incoterms 2010 as per Section 3.2.
- 6.2 If the Supplies include installation, erection and/or commissioning, risk shall pass on the day of Acceptance (Section 10).
- 6.3 If dispatch, delivery, the start or the completion of assembly, installation or erection, the commissioning, the trial run or the taking over by the Customer is delayed for reasons for which the Customer is responsible or if the Customer has otherwise failed to accept the Supplies, the risk shall pass to the Customer on the date when it would have passed but for such events or failure of the Customer.

7. DELIVERY

- 7.1 Times set for delivery or performance related to the Supplies shall only be binding if all required documentation to be furnished by the Customer, such as necessary permits and approvals, plans, drawings and schedules to be provided by the Customer, are received in time and subject to fulfillment of the agreed terms of payment and other obligations by the Customer. To the extent that these conditions are not fulfilled on time, the time for delivery shall be extended accordingly.
- 7.2 If non-observance of any obligation of SMSB is due to "**Force Majeure**", defined as impediments or other circumstances beyond SMSB's reasonable control, the time for delivery, installation, completion and other performance shall be extended accordingly. SMSB is entitled to claim from the Customer for all its reasonable costs incurred in connection with the Force Majeure. Force Majeure events include but not limited to: natural disasters or catastrophic events such as acts of God, epidemics, fire, flood, damage or destruction by lightning, typhoons, tsunami or earthquakes; nuclear accidents; acts or omissions by civil or military government authorities, such as foreign currency restrictions, non-issuance, revocation or suspension of export or import licences, governmental priority orders, allocations or restrictions upon the use of materials or manpower; war (whether governmentally declared or otherwise), riots, sabotage or revolutions; terrorist acts; strikes or lockouts. A Party seeking relief shall notify the other Party as soon as practicable after the Force Majeure event and its effects on its ability to perform become known to him. Each Party shall make its reasonable efforts to minimize the consequences of the Force Majeure event.
- 7.3 In addition to Section 7.2, SMSB shall be entitled to extension of time for delivery/performance if the delivery/performance is delayed due to acts/omissions of the Customer, its agents and contractors; or the carrying out of variation works as requested by the Customer. SMSB shall notify the Customer of any additional costs resulted from such delay or variation, and actual costs incurred by SMSB shall be reimbursed by the Customer.
- 7.4 Subject to Sections 7.2 and 7.3, if SMSB is solely responsible for the delay and the Customer can prove that it has demonstrably suffered a loss there from, the Customer may claim a compensation as liquidated damages of 0.5% of the price of that part of the Supplies which due to the delay could not be put to the intended use, for every completed week of delay ("Liquidated Damages").
- 7.5 Payment of the Liquidated Damages shall be the exclusive remedy of the Customer for delay and under no circumstances shall the total aggregate liquidated damages payable by SMSB under this Contract, whether for delay or performance (if specifically agreed to in writing), exceeds 10% of the Contract Price. All other claims exceeding the rights stated in this Section 7 shall be excluded.
- 7.6 At SMSB's written request, the Customer shall declare within a reasonable period of time whether it, due to the delayed Supplies by SMSB, intends to terminate the Contract or insists on the delivery of the Supplies.
- 7.7 If after a period of fourteen (14) days from the date of notification the readiness for dispatch was given, the dispatch or delivery is delayed for any reason beyond SMSB's reasonable control, SMSB shall be entitled, at SMSB's option, to arrange suitable storage at SMSB's premises or elsewhere, and shall take reasonable measures to protect the Customer's interest in the Products. The Customer shall accept all costs of storage, insurance, demurrage, handling and other charges claimed by SMSB.
- 7.8 Unless otherwise agreed in writing, SMSB is allowed to make partial deliveries against an order and to separately invoice the same. Payment thereof will fall due in accordance with Section 4.1.

8. WORK ON SITE

Unless otherwise agreed in writing, any works associated with the Supplies which are performed outside SMSB office, factory or workshop ("Site"), such as assembly, installation, erection, commissioning and testing of the Supplies ("Site Works") shall be subject to the following provisions:

- 8.1 The Customer shall provide at its own expense and in a timely manner:
- unrestricted access to the Site, including but not limited to entry permits and security passes;
 - Comprehensive assistance in relation to obtaining import, export and customs clearance for personal belongings and goods of SMSB and its subcontractors' personnel and of the equipment, tools and goods required for the Site Works;
 - Comprehensive assistance to SMSB and its subcontractor's personnel for the obtaining of visas, work and residential permits to the extent required for the carrying out of the Site Works as well as with regard to any permits required for leaving the country;
 - Repatriation of SMSB's and its subcontractor's personnel in case of emergencies including but not limited to war, civil war, civil disturbance and epidemics;
 - all earth and construction work and other ancillary work outside SMSB's scope, including the necessary skilled and unskilled labor, construction materials and tools;
 - the equipment and materials necessary for assembly and commissioning such as scaffolds, lifting equipment and other devices as well as fuels and lubricants;
 - energy and water at the point of use including connections, heating and lighting;
 - suitable dry and lockable rooms of sufficient size adjacent to the Site for the storage of machine parts, apparatus, materials, tools, etc. and adequate working and recreation rooms for SMSB's and its subcontractors' personnel, including sanitary facilities as are appropriate in the specific circumstances. Furthermore, the Customer shall take all reasonable measures to protect the property of SMSB and its personnel at the Site; and
 - protective clothing and protective devices needed due to particular conditions prevailing on the specific Site.
- 8.2 Before the Site Works commences, the Customer shall, at its own expense:
- make available any information required concerning the location of concealed electric power, gas and water lines or of similar installations as well as the necessary structural data; and
 - provide all necessary materials and equipment and carry all preparatory works as necessary to enable the Site Works to commence without interruption. Access roads and the Site must be level and clear.
- 8.3 The Customer shall warrant that the Site or any equipment at the Site is free from asbestos and any other materials/ substances dangerous to health. Should the Site or any equipment affected by the Site Works contain such substances or materials, the Site or the relevant equipment shall be decontaminated at the account of the Customer prior to SMSB starting the Site Works. The Customer shall also be responsible for the timely and lawful disposal of its equipment or parts thereof which are or become hazardous waste.
- 8.4 If the Site Works (or any part of it) is delayed due to circumstances for which SMSB is not responsible, the Customer shall bear the reasonable costs incurred for idle times, remobilization costs any additional traveling expenditure incurred by SMSB's personnel, additional administrative charges incurred by SMSB and such other costs as may be incurred by SMSB's subcontractors. SMSB shall be entitled to an adjustment to the schedule/time for completion and the Contract Price.
- 8.5 If the remuneration for Site Works performed is on cost reimbursement or time and material basis, the Customer shall promptly certify the hours worked by SMSB's personnel at an agreed intervals upon receipt of the relevant documents such as timesheets and service reports. If the Customer does not certify within the agreed time frame, the Site Works (or relevant part of it) are deemed to be completed and accepted by the Customer, including acceptance as to the accuracy and completeness of the documents submitted such as timesheet and content of service report.

9. PERFORMANCE AND TEST

- 9.1 Any performance figures given by SMSB are based on SMSB's experience and expectation to be obtained upon testing. SMSB shall be under no liability for damages for failure to attain such figures unless SMSB specifically guaranteed them in writing. Where SMSB has agreed specifically to performance figures but fails to achieve such figures, SMSB shall make good such failure as provided for in Section 11 and SMSB liability shall be (a) subject to Section 14, in the event of no expressed agreement on liquidated damages for failure to achieve guaranteed performance figures, or (b) subject to Section 7.4, if such liquidated damages have been specifically agreed to.
- 9.2 Where inspection and test are to be performed, they will be in accordance with SMSB's standard practice and will be carried out at the place of manufacture or installation or at some other places at SMSB's option. The cost of these test and any other test specified in the Contract are to be borne by SMSB. Any further test or witnessed tests required by the Customer will be carried out at his expense subject to SMSB's consent to perform such further tests. After seven (7) days from the date of notification that SMSB is ready to carry out any witnessed test required and in the absence of confirmation from the Customer, such test may be carried out in the absence of the Customer or his representative and shall be deemed to have been made in their presence.

10. ACCEPTANCE

- 10.1 If the Supplies are for pure delivery/supply of products and do not require any assembly, installation, erection and commissioning at the Site, acceptance by the Customer takes place once the delivery of the Supplies has been effected, and the Customer does not raise any written notification of defects/objection under Section 10.2, provided that the Customer shall not refuse to receive and accept Supplies due to minor defects.
- 10.2 Upon receipt of Supplies or shipping documents and not later than two (2) weeks after receipt, the Customer shall check the quantity and conditions of the Supplies and notify the last carrier with a copy to SMSB of (i) any damage caused to the Supplies by the transport and/or (ii) objections regarding forwarding or transport; as well as secure evidence including but not limited to making photographs of any damage.
- 10.3 In the event that the Supplies include complete assembly, installation, erection and commissioning at the Site, acceptance of the Supplies shall only occur when the commissioning of the Supplies has been completed by SMSB, and accepted by the Customer. If, after completion of Supplies, SMSB demands acceptance of the Supplies, the Customer shall comply therewith within a period of two (2) weeks. In default thereof, acceptance is deemed to have taken place.
- 10.4 Acceptance is also deemed to have been effected if the Supplies are put to use by the Customer, or the Customer refuses to accept the Supplies without providing written reasons and specific details of such refusal within the said two (2) week period.
- 10.5 The Customer shall not be entitled to refuse acceptance in the case of (a) defects which only insignificantly impair the use of the respective Supplies; (b) minor deviations; (c) defective installation or erection not carried out by SMSB; or (d) reasons for which are not within reasonable control of SMSB.

11. WARRANTY AND DEFECTS LIABILITY

- 11.1 SMSB warrants that the Products shall correspond with their specification at the time of delivery and will be free from defects in material and workmanship under normal use and service during the Defects Liability Period stated in Section 11.4, and that it will perform the Services with reasonable care and skills in a workmanlike manner ("Warranty").
- 11.2 A defect shall be a deviation of the Supplies from the Warranty stated above, which materially affects the commercial use of the Supplies ("Defect").
- 11.3 A Defect shall be, at SMSB's discretion, repaired, replaced, re-performed free of charge, provided that the Defect is due to reasons/circumstances already existed before Acceptance (Section 10) has occurred. For defective Services, SMSB shall at its sole option, choose to rectify or re-perform the Services.
- 11.4 Unless otherwise agreed in writing, the liability period for the Defects under Warranty ("Defects Liability Period") shall be twelve (12) months for all Supplies other than software where the Defects Liability Period for the latter shall be six (6) months.
- 11.5 The Defects Liability Period shall commence from the date of Acceptance (Section 10). If Acceptance does not occur due to reasons beyond the reasonable control of SMSB, Defects Liability Period shall end latest eighteen (18) months (or such other period as otherwise agreed) from the date of notification of readiness of dispatch of products or completion of services.
- 11.6 The Defects Liability Period for repaired/replaced/re-performed Supplies shall be six (6) months commencing from the date when the repair/replacement/re-performance has been completed, provided that the Defects Liability Period for the Supplies as a whole has not expired at an earlier date. The Defects Liability Period shall in no event restart or be prolonged by a repair or replacement of any part of the Supplies.
- 11.7 The Customer shall, within the Warranty Period, notify any claims for Defects to SMSB in writing within seven (7) days of the alleged Defect occurring in accordance with agreed terms and claim procedures under the Contract. SMSB is not obliged to fulfill any claims for repair or replacement which does not comply with the aforementioned requirements. All written Defects claims are to be received by SMSB within the Defects Liability Period.
- 11.8 SMSB shall be given the opportunity to repair or to replace the Defective Supplies within a reasonable period of time.
- 11.9 There shall be no claims based on Defect arising from any drawing, design or specification supplied by the Customer or in cases of insignificant deviations from the agreed quality, of only minor impairment of usability, of natural wear and tear, or damage arising after the passing of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective civil works, inappropriate foundation, unsuitable soil conditions, or claims based on particular external influences not assumed under the Contract, or from non-reproducible software errors.
- 11.10 SMSB shall not be responsible for additional expenses incurred (including costs of travel, transport, labour and material), to the extent that such expenses are increased because the subject matter of the Supplies has subsequently been brought to another location on the Customer's own accord, other than the stated location for delivery/performance in the Contract.
- 11.11 The rights of the Customer for any Defects shall be limited to and be in accordance with what is expressly provided in this Section 11.
- 11.12 The liability of the SMSB shall cease if (a) the Customer or a third party carries out

repair or modifications to the Supplies or modifications without prior written approval by SMSB; (b) the Customer fails to appropriately mitigate damages resulting from a Defect; (c) the Customer fails to notify SMSB of a Defect in writing in accordance with Section 11.7; and/ or (d) the Customer does not grant SMSB the opportunity to remedy a Defect within a reasonable period of time.

11.13 The above Warranty is exclusive and all other warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. SMSB specifically disclaims the implied warranties of merchantability and fitness for a particular purpose.

11.14 The expiration of Defects Liability Period shall mark the end of all contractual obligations of SMSB save as otherwise expressly provided in the Contract.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 SMSB herewith reserves all rights, title and interest in all intellectual property rights including but not limited to patents, trademarks and/or copyrights ("Intellectual Property Rights" or "IPR") pertaining to its cost estimates, drawings and other documents (hereinafter referred to as "Documents"). The Documents shall not be made accessible to third parties without SMSB's prior consent and shall, upon request, be returned without undue delay to SMSB if the Contract is not awarded to SMSB. Sentences 1 and 2 shall apply mutatis mutandis to the Customer's Documents; these may, however, be made accessible to those third parties to whom SMSB has rightfully subcontracted the Supplies.
- 12.2 Unless otherwise agreed, SMSB shall provide the Supplies free from third parties' IPR with respect to the country of the place of delivery only.
- 12.3 If a third party asserts a justified claim against the Customer based on an infringement of an IPR by the Supplies made by SMSB and used in conformity with the Contract, SMSB shall only be liable to the Customer as follows:-
- (a) SMSB shall choose, at its own election and expense, whether to acquire the right to (i) use the IPR with respect to the Supplies concerned; or (ii) modify the Supplies such that they no longer infringe the IPR; or (iii) replace them. SMSB shall be given the opportunity to rectify the defective title within a reasonable period of time.
 - (b) The obligations of SMSB under this Section 12.3 shall apply only if the Customer (i) immediately notifies SMSB of any such claim asserted by the third party in written form, and (ii) does not concede or acknowledge the existence of an infringement and (iii) leaves any protective measures/defence and settlement negotiations to SMSB's sole discretion. If the Customer stops using the Supplies in order to reduce the damage or for other reasons, it shall be obliged to make clear in writing to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.
- 12.4 Claims of the Customer shall be excluded if:
- (a) Customer (including its agents, employees or contractors) is responsible for the infringement of an IPR; or
 - (b) the infringement of the IPR is caused by specifications made by the Customer; or
 - (c) the infringement of the IPR is caused by a type of use not foreseeable by SMSB or by the Supplies (or any part thereof) being modified by the Customer or being used together with products not provided by SMSB.
- 12.5 This Section sets forth SMSB's entire liability for infringement of third party IPR. Any further rights and remedies of the Customer (including right to claim damages) for whatever reason (whether in contract, tort including negligence, willful default or otherwise) resulting in whatsoever losses or claims of the Customer against SMSB or its agents shall be excluded.
- 13. SOFTWARE**
Unless otherwise agreed, the following applies if the Supplies include software ("Software"):
- 13.1 The Customer has the non-exclusive and non-transferable licence to use standard Software delivered with the Products, provided that it remains unchanged, is used within the agreed performance parameters for the purpose stated in the manual of the Goods, and on the agreed equipment.
- 13.2 The Customer acknowledges that the Software contains valuable confidential and proprietary information and trade secrets of SMSB or its licensors, and undertakes that it (including its agents, employees and/or servants) shall not without prior written consent from SMSB, disclose the details of the Software to third parties.
- 13.3 All rights, title and interest in the Software, including revisions and updated versions, shall remain the property of SMSB or its licensors.
- 13.4 In the event that the Software contains third party components of which SMSB has licensed under generally used "open source" licence terms, the terms of the Contract shall apply to those components to the extent that they do not conflict with the "open source" licence terms. If necessary, the Customer agrees to sign a licence agreement with the licensor or the Software.
- 13.5 The Customer shall not make any back up copies of the Software without SMSB's prior consent in writing. Unless otherwise agreed, the use of the Software on hardware other than the agreed equipment requires SMSB's consent in writing, and the Software shall be provided in machine-readable form (object code) only.
- 13.6 SMSB may terminate the Customer's licence upon notice of breach of these licence terms. The Customer must destroy all copies of the Software immediately upon notice of termination. The Customer will not disassemble or otherwise modify the Software without express agreement in writing from SMSB.

14. LIABILITY

- 14.1 The Customer has no claim except as otherwise expressly stated in the Contract, irrespective of the legal grounds they may be based on.
- 14.2 SMSB's entire liability and the Customer's exclusive remedy for damages from any cause whatsoever (including negligence or for willful default or otherwise of SMSB and resulting in whatsoever damage and/or loss or injury to the Customer and/or its employees and/or agents including damage to property and other assets of the Customer) shall not exceed:
(a) 10% of the Contract Price; or
(b) RM2.0 million; whichever is lower, on a per occurrence basis as well as in aggregate. All liabilities of SMSB in connection with the Contract shall end latest upon the expiry of the Defects Liability Period unless expressly provided otherwise.
- 14.3 Without prejudice to the generality of the foregoing, all claims against SMSB for indirect or consequential damages, loss of profit, loss of revenue or anticipated savings, loss of production, loss of use, cost of capital, interruption of operations, loss of power, cost of purchased or replacement power, loss of information and data, loss of interest, loss of any contract, loss of business, financial or economic loss, financing expenses, wasted overheads, increase in operating costs, loss of opportunity, incidental or punitive damage, or indirect and consequential damage resulting from contracts concluded by the Customer with third parties, are hereby excluded.
- 14.4 This Section 14 shall (i) apply whether the liability claim is based on breach of contract, breach of warranty, tort (including negligence), strict liability, guarantee, indemnity and any other legal theory and (ii) apply for the benefit of SMSB's affiliates, subcontractors, suppliers or agents of any tier and their respective agents, directors, officers and employees.
- 14.5 The limitations and exclusions of liability contained in this GC shall apply to the fullest extent permitted by law.
- 14.6 In all cases the Party establishing or alleging a breach of contract shall be under a duty to take all necessary measures to mitigate the loss which has occurred provided that he can do so without unreasonable inconvenience or cost.

15. TERMINATION/SUSPENSION

- 15.1 A Party shall be entitled to terminate the Contract by written notice to the other Party, if:
(a) there exist a Force Majeure event as defined in Section 7.2 which subsist for a period of more than six (6) months; or
(b) the other Party voluntarily files a petition in bankruptcy or voluntarily resolves to wind up, or a petition in bankruptcy or winding up is involuntarily filed against the other Party (which petition is not discharged within thirty (30) days after filing).
- 15.2 SMSB shall be entitled to terminate the Contract forthwith by written notice to the Customer, if:
(a) an encumbrancer takes possession of, or a receiver is appointed over, any of the property of the Customer;
(b) the Customer ceases, or threatens to cease, to carry on business; or
(c) there is a change in control (the ability to direct the affairs of another whether by virtue of contract, ownership of shares, or otherwise howsoever) of the Customer which in the reasonable opinion of SMSB adversely affects the position, rights or interests of SMSB.
- 15.3 In the event that:
(a) the Customer fails to perform its obligations in accordance with the Contract; or
(b) in the reasonable opinion of SMSB, there occurs a material change in the financial position of the Customer which is likely to affect the Customer's ability to perform its obligations under the Contract;
SMSB shall, at its own option, suspend the provision of its obligations under this Contract. If the Customer fails to remedy its default after the lapse of a reasonable cure period has been given by SMSB, SMSB shall be entitled to terminate the Contract, in its entirety or partially, with immediate effect.
- 15.4 Any accrued rights to which either Party is already entitled at the date of such termination shall remain unaffected.
- 15.5 The Customer shall only be entitled to terminate the Contract if an adequate extension of time granted to SMSB has not resulted in completion of delivery/performance.
- 15.6 The Customer shall not be entitled to terminate the Contract solely on the ground that the aggregate limit of Liquidated Damages specified in Section 7.5 has been reached.
- 15.7 In the event of suspension or termination of the Contract due to the breach of the Contract by the Customer or reasons that SMSB is not responsible for,
(a) the Customer shall reimburse SMSB for all additional costs and expenses reasonably incurred by SMSB including any costs, expenses and liabilities in expectation of the completion of the Supplies; and
(b) the Customer shall pay to SMSB the balance of the Contract Price minus any payments already made prior to suspension or termination.
- 15.8 The rights and remedies granted to the SMSB pursuant to the Contract are in addition to, and shall not limit or affect, any other rights or remedies available at law or in equity.

16. DISPUTE SETTLEMENT; APPLICABLE LAW

- 16.1 If any dispute arises in connection with this Contract, the responsible representatives of the Parties shall attempt, in fair dealing and in good faith, to settle such dispute. Each Party can request from the other Party that on both sides a senior representative becomes involved in the negotiations. Each Party is at any time entitled to terminate the settlement negotiations and to have recourse to an Alternative Dispute Resolution ("ADR") proceeding set forth in Section 16.2 below through written notification to the other Party.
- 16.2 If the Parties are not able to reach an amicable settlement pursuant to Section 16.1, they shall try to agree on an appropriate ADR proceeding (for example mediation, conciliation, expert determination, dispute board, adjudication). If they do not reach agreement on the appropriate ADR proceeding within fourteen (14) days after failure of the settlement negotiations or if the dispute is not settled through an ADR proceeding within a period of two (2) months after initiation of the ADR proceeding, each Party may initiate a dispute resolution proceeding in accordance with Section 16.3 below.
- 16.3 Subject to Sections 16.1 and 16.2, any dispute arising out of or in relation to this Contract, including the validity, invalidity, breach or termination thereof, shall be settled as follows:
(a) For disputes where the total quantum (including all counterclaims) is less than RM30million, such disputes shall be determined in legal proceedings in the Courts of Malaysia;
(b) For all other disputes which do not fall under Section 16.3(a), such dispute shall be referred to arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce ("ICC Rules") and determined by three (3) arbitrators appointed in accordance with the said Rules, in force on the date when the Notice of Arbitration is submitted in accordance with these Rules.
- The seat and place of the arbitration shall be Malaysia. The arbitral proceedings shall be conducted in English.
- 16.4 The Contract shall be governed by the law in force in Malaysia. The application of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980, shall be excluded.
- 16.5 If not specified otherwise by the Parties, any trade terms used in the implementation of this Agreement shall be interpreted according to the International Terms defined by the ICC (International Chamber of Commerce, Paris) Incoterms in the version applicable at the time of the transaction.

17. ASSIGNMENT; SUBCONTRACT

- 17.1 The Customer shall not assign its rights or obligations under the Contract without prior written consent of the other Party.
- 17.2 SMSB may subcontract for the performance of any part of its obligations under the Contract to others and may assign any of its rights (including receivables) under the Contract without the prior consent from the Customer.

18. CONFIDENTIALITY

- 18.1 Unless SMSB has given its prior written consent, the Customer shall not reproduce or disclose to any third party any Confidential Information (as defined in Section 18.2 below), and shall undertake all necessary measures to prevent the Confidential Information from being disclosed to or used by unauthorized persons or parties. In the event that SMSB has consented to the disclosure of the Confidential Information to a third party by the Customer, the Customer shall procure that such third party undertakes to be bound by similar confidentiality obligations. The Customer shall indemnify and hold harmless SMSB from any damage incurred through the breach of said confidentiality obligation by the third party.
- 18.2 "Confidential Information" means any information which is disclosed by SMSB to the Customer in oral form or in writing or contained in any form or medium and may or may not be expressly stated to be confidential or marked as such. Without limiting the generality of the foregoing, Confidential Information may include or relate to information concerning the Supplies and/or SMSB and/or the business of SMSB such as pricing information, manufacturing processes, business methods, technology, software, drawings, know-how, products specifications, inventions, employees, suppliers, customers, business and market forecasts, research, development, accounting, finances, marketing, and other purchasing and sales information.
- 18.3 This Confidentiality obligation shall not apply to information which:
(a) is or becomes part of the public domain through no fault of the Customer; or
(b) is disclosed to the Customer in good faith by a third party who has a right to make such disclosure; or
(c) as evidenced by Customer's written records, is/becomes developed independently by the Customer without reliance on the Confidential Information or is /has been known to the Customer prior to its disclosure by SMSB; or
(d) is required to be disclosed by law, except to the extent eligible for special treatment under an appropriate protective order and subject to the Customer's obligation to notify SMSB of the requirement in a timely manner.
- 18.4 Notwithstanding anything to the contrary in the Contract, the provisions contained in this Section 18 shall survive the termination of the Contract.
- 18.5 The Customer hereby agrees and consents that his personal data provided to SMSB, or obtained by SMSB, shall be processed by SMSB in accordance with SMSB's personal data notice and policy as set out in <http://www.siemens.asia/my/en/Disclaimer/protection-policy>. If any personal data provided to SMSB does not belong to the Customer but to its officer,

representative or employee, the Customer hereby warrant that such officer, representative or employee agrees and consents for his personal data to be processed by SMSB in accordance with SMSB's personal data notice and policy as set out in <http://www.siemens.asia/my/en/Disclaimer/protection-policy>.

19. OTHERS

- 19.1 The Contract constitutes the entire agreement between the Parties and supersedes all prior negotiations, representations or agreements related to the Contract, whether written or oral.
- 19.2 The legal invalidity of one or more provisions of this GC and the Contract in no way affects the validity of the remaining provisions of the GC and the Contract. In such case, the Parties shall by mutual agreement substitute for the provisions concerned a provision considered substantially equivalent in economic terms. This shall not apply if it would be unreasonable for one of the parties to be obligated to continue the Contract.
- 19.3 No terms or provisions shall survive the expiry or termination of the Contract unless expressly provided in the Contract.
- 19.4 No waiver by SMSB or any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provisions. If SMSB delays, targets or chooses not to enforce its rights under the Contract, it shall not affect its right to do so at a later date.
- 19.5 Any notice required or permitted to be given by either Party ("Sending Party") to the other ("Receiving Party") shall be in writing and signed by the authorized representatives of the Sending Party addressed to the Receiving Party at its registered office or principal place of business or such other address as may have been notified earlier. Notices shall be delivered by hand, prepaid registered post or facsimile and shall be deemed to have been served:
- (i) if by hand, at time of delivery;
 - (ii) if by prepaid registered post, three (3) working days after posting;
 - (iii) if by facsimile, on the date printed on the facsimile transmission report produced by the Sending Party's machine.
- 19.6 The Contract shall be binding on each Party's estates, heirs, executors, successors-in-title and permitted assigns.

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