

General Terms and Conditions of Siemens Schweiz AG Building Technologies for Maintenance/Service (Version 01.2018)

1. Scope

- 1.1 These General Terms and Conditions govern the contractual relationship between the Customer and Siemens Schweiz AG, Building Technologies ("BT"), and are binding for all maintenance/services provided by BT on customer-specific security and building automation systems ("Systems") and their components (hardware and software) and/or which are used to check and optimize the energy efficiency of the systems. They shall also apply in the event that the customer indirectly accesses its own systems via the BT systems
- 1.2 Services shall be provided by BT either on a time and material basis or pursuant to a Maintenance/Service Provision Contract ("Contract").
- 1.3 The Contract or the services based on a time and material basis shall be performed exclusively with reference to and pursuant to these General Terms and Conditions of Building Technologies for Maintenance/Service ("GTC-MS"). Any other conditions or special arrangements shall only apply if they are expressly accepted by BT in writing.

2. Services (content and scope)

- 2.1. The maintenance/services to be provided by BT, their cycles and frequencies shall be provided in accordance with the type, age and size of the System and taking account of the Customer's specific needs ("Contractual Services") or as agreed on an individual basis with the Customer ("Services Based on Time and Material" and together with the Contractual Services hereinafter "Services").
- 2.2. Services shall as a matter of principle be provided only on products licensed by BT. The exact content and scope of the individual Contractual Services is defined in a separate Service Description, which, in the version applicable at the time, forms an integral part of the Contract.
- 2.3. It is the assumption of BT that the customer maintains an IT security scheme comporting with the state of the art, and shall ensure that the appropriate security measures (e.g. system security updates and anti-virus programs) are taken and always kept up-to-date.
- 2.4 Where remote access to the Customer's systems is required in order to provide services the Customer shall set this up at its own expense and at its own risk. It shall issue the necessary authorisations and shall at its own expense inform BT and its employees of its IT procedures.
- 2.5. The remote access shall be effected as part of the Siemens security concept that currently applies in each case. Siemens shall be authorized to adapt said security concept at any time without prior notice to the extent that it does not jeopardize the implementation of remote access. If the remote access cannot be implemented or continued as part of this security concept, BT's obligation to provide the service shall lapse for the duration of the interruption without any compensation being payable.
- 2.6 If the Contract is only entered into after the warranty period agreed in the system supply contract, the Contractual Services shall only be performed following an initial inspection, for which a charge shall be made. Any necessary repairs that come to light during the initial inspection shall be performed by BT and charged separately.
- 2.7. The precise content and scope of the individual Services Based on Time and Material shall be individually agreed with the Customer.
- 2.8 As proof of the Services performed, BT employees shall issue a job report for every activity carried out in connection with the performance of a Service.

3. Place of performance and performance of the Services

- 3.1. The Services shall be performed by accessing the System at its installation site in Switzerland and Liechtenstein, at BT's business premises or by remote access, as BT sees fit. Unless otherwise stated in the Contract, hardware shall be supplied DDP (Delivery Duty Paid), place of installation, in accordance with Incoterms 2010. If remote access is interrupted due to circumstances for which Siemens is not responsible and performance of the service is impossible, BT's service obligation shall lapse for the duration of the interruption.
- 3.2 Unless otherwise agreed in the Contract, BT shall perform the Services during Siemens' regular working hours.
- 3.3. BT shall be entitled to change and/or exchange the components of the System supplied under the Contract if the new components have equivalent or better functionality than the exchanged components and only to the extent that they are compatible with the System maintained by it. BT shall make the necessary changes to technical and other documentation.
- 3.4 BT shall supply documentation and software on a suitable data carrier of its choice.
- 3.5 When accessing the System remotely or at the System's installation site, BT shall observe any safety instructions and access rules provided to it in advance by the Customer.
- 3.6. BT shall be entitled to commission third parties to perform all or part of the Services to be provided by it. If asked to do so, BT shall inform the Customer of the name of the subcontractor.
- 3.7. BT shall at the request of the Customer provide, within thirty days after access, the names of the employees who have specifically performed remote service.

4. Deadlines

BT shall agree all deadlines, particularly deadlines by which preventative maintenance is to take place, with the Customer in advance. If BT is unable to meet an agreed deadline for reasons beyond its control and/or if obstacles or events arise which cannot be averted despite the application of due care by

BT (e.g. accidents, significant operational disruptions, labour disputes, natural events etc.), BT shall inform the customer immediately about the extent and background of the delay. The Parties shall agree another date or another course of action. Unless otherwise expressly agreed in writing, all liability on the part of BT resulting from and in connection with delayed deadlines shall be excluded. This exclusion shall not apply to loss or damage resulting from the delay caused by negligent or intentional actions on the part of BT.

5. Requirements for the provision of services, duties and obligations of the Customer (provision of information, equipment etc.)

- 5.1. Subject to the access rules concerned, the Customer shall grant BT, its auxiliary personnel and subcontractors prompt and unimpeded access to the System and its components. The Customer shall ensure that a competent contact person is available for BT during deployments.
- 5.2 When the Customer requests a Service, it shall describe the original situation to BT before the deployment and shall make available to BT any information and documentation it has at its disposal which may be required for the provision of the Service, especially for fault and error rectification.
- 5.3. The Customer shall promptly provide BT with the auxiliary equipment required under health and safety laws (SUVA [Federal Accident Insurance Institution]/EKAS [Federal Commission for Safety at Work]) (e.g. scaffolding, lifting gear, signage, barriers etc.) and shall provide the necessary transmission equipment, network connections and workspaces. Furthermore, all installation and measuring according to the Low Voltage Directive (LVD/NIV) are to be carried out by the Customer. The Customer shall be obliged to take all necessary measures at the place of performance to protect the health and ensure the safety of BT engineers and other auxiliary personnel.
- 5.4 For the duration of the period in which BT is obliged to perform the Contractual Services, the Customer may only have work performed on the System by BT or third parties authorized by BT.
- 5.5. The Customer shall be obliged to follow the relevant operating and use instructions and in particular to adhere to the general technical conditions and environmental values (i.e. room temperature, etc.) approved by BT. If these general conditions cannot be observed for whatever reason, the Customer shall inform BT immediately.
- 5.6. The Customer shall be obliged to notify BT of any disruptions, shutdowns or disassembly of the system in good time. The same applies to structural changes which could make it harder or impossible for BT to perform the Contractual Services. If the Customer fails to report such an event to BT, the Customer shall bear all the associated risks and losses.
- 5.7 If BT deems it necessary to do so for the purpose of performing the Services, the Customer undertakes to temporarily shut down the whole System or parts of the System, after prior consultation with BT.
- 5.8 Where the fire detection or sprinkler systems are shut down (completely or partially) the customer must initiate the compensation measures required by VKF [Association of Cantonal Fire Insurance Companies]. In case of interruptions exceeding 24 hours, the Customer must inform the fire authorities.
- 5.9. The Customer shall be responsible for making proper data backups. The Customer shall be obliged to provide BT with a current backup of the entire System at any time. If the Customer has agreed data backup with BT as an option to the Contract, the content and scope of the data backup will be defined in the Contract and the associated description of services.
- 5.10 If BT is unable to perform a Contractual Service on time or properly for reasons for which the Customer is responsible (e.g. as a result of incorrect, incomplete or delayed provision of services or materials), BT shall be entitled to charge all resulting additional expenses and costs at its applicable rates.
- 5.11 Unless agreed specifically in writing, the following shall be excluded from BT's Contractual Services: a) repair of faults and damage, including establishing their cause, to installations, equipment and components not supplied by BT; faults and damage which are the result of b) force majeure (e.g. damage caused by natural hazards), c) intervention by third parties not commissioned or authorized by BT; d) operating errors; e) failure to adhere to specified environmental conditions (e.g. room temperature, EMC, etc.).
- 5.12 BT shall be entitled to charge the Customer separately for the costs arising from fault location if the faults reported by the Customer cannot be identified or reproduced during the fault location process or are caused by factors outside the System maintained by it.
- 5.13 BT shall not pay any costs associated with any security and monitoring measures put in place by the Customer on the System maintained by BT pursuant to the Contract.

6. Payment, terms of payment, indexing

- 6.1. The Customer shall pay BT a flat-rate payment for the performance of the Contractual Services ("Flat Rate"). This rate is subject to VAT. The Flat Rate is payable annually in advance at the beginning of the calendar year.
- 6.2. Any changes to or modifications of the scope of the System defined in the Contract or Systems that have been in operation for more than ten (10) years shall entitle BT to review the Flat Rate. In such cases, any increase in the Flat Rate shall be notified to the Customer by issuing a new annual invoice. If the notified increase amounts to more than 20% of the originally agreed Flat Rate, the adjustment of the Flat Rate and the Contract shall be agreed in writing.
- 6.3. Services Based on Time and Material shall be invoiced based on the current price list of BT ("Time and Material Cost").

- 6.4 Unless otherwise agreed, all invoices shall be payable without cash discounts and without any other deduction within 30 days of receipt of the invoice. The setting-off of such claims against counter-claims shall not be admissible. If the Customer fails to meet the agreed payment deadlines, it shall be in default without further reminder.
- 6.5 If the Customer defaults on payment of the outstanding amount, BT shall be entitled to cease performing the Contractual Services. In the event of continued payment default, BT reserves the right to terminate the Contract for good cause. Clause 11.2 of the GTC-MS shall apply.
- 6.6 The Flat Rate and hourly rates shall be amended annually in line with inflation and shall track the Swissmem wage index.
- 7. Warranty**
- 7.1. If the provision of material is agreed or is necessary in connection with the provision of Services, the BT General Terms and Conditions for Products shall apply. The BT General Terms and Conditions for Software shall apply to the delivery of software.
- 7.2 If material is delivered, BT shall provide a warranty in respect of proper and careful execution for a period of twelve (12) months after completion of the relevant Service or after delivery of the material concerned.
- 7.3. In all cases the warranty period shall end no later than 18 months after the commencement of the ordinary warranty period.
- 7.4. BT does not warrant that the System maintained by it can be used in a fault-free manner and without interruption in all configurations desired by the Customer or that it is compatible with systems not delivered by BT. BT provides no warranty for wear and tear parts.
- 7.5. Siemens BT shall only be liable for the correctness of the data provided by Siemens at the WAN exit point of the computer used by Siemens.
- 8. Liability**
- 8.1 BT shall accept unlimited liability for personal injury caused by it within the scope of the Contractual Services in accordance with the statutory provisions, and in the event of direct damage to property caused in connection with the performance of the Services and for which BT is responsible, BT shall pay the cost of repair of the property up to an amount of CHF 300,000 per event but not exceeding a total of CHF 1,000,000 (one million) per calendar year.
- 8.2 In the event of loss of or damage to data and/or data storage media, BT's liability for costs shall be limited to the recovery of backed up data.
- 8.3 Where the customer uses the remote access to make changes to its own system, the customer shall bear sole responsibility for such changes and for compliance with the provisions of law applicable in connection therewith.
- 8.4. Claims on the Customer's part extending beyond those expressly cited in these GTC-MS, in particular those arising from warranty, delay, non-performance and claims for damages – whatever their legal basis – and any liability for pecuniary damage, loss of profit, loss of use, production stoppages, operational interruption or the claims of third parties, and for all indirect or consequential damage are excluded, unless mandatory liability exists by virtue of unlawful intent or gross negligence.
- 8.5 The Customer shall be liable for the completeness and correctness of the documentation and information made available to BT, including in particular system-specific security guidelines, work instructions, accident prevention instructions etc. It shall itself be responsible for the security of its IT systems.
- 8.6 In the light of the Customer's statutory duty to mitigate damage or loss, it shall cooperate as far as is reasonable in preventing the occurrence of damage or loss and in the identification and rectification of any damage or loss.
- 9. Secrecy**
- 9.1. Insofar as BT is given access to confidential data belonging to the Customer during the performance of Services, BT shall comply with the data protection laws and treat such data confidentially in the same manner as it would treat its own trade secrets, it shall not distribute them unnecessarily within the company or the group, and it shall not disclose them to external third parties. This obligation shall not apply to documents and information which can be proved: a) to be in the public domain without infringing this secrecy obligation, or b) to have been legally acquired by third parties not subject to a secrecy obligation; or c) to have been produced independently by BT. BT undertakes to impose this secrecy obligation on any subcontractors it brings in.
- 9.2. The customer undertakes to treat all documents received from BT bearing the mention "vertraulich", "confidential", "Fabrikationsgeheimnis", "manufacturing secret", "Betriebsgeheimnis" or "trade secret" etc. confidentially as it would its own trade secrets and not to disclose them to any third party.
- 9.3. The Customer acknowledges that the information and documents concerning it may also be kept and processed outside Switzerland. They may be disclosed during the contractual performance both to Siemens AG, Munich and to the latter's affiliated companies.
- 9.4. If the service requires remote access to personal data, the Customer shall be informed and requested to authorize access. The personal data shall be accessed only after approval by the Customer. BT's obligation to provide the service shall be suspended until approval is received, with no costs payable.
- 10. Rights of use, protected rights of third parties**
- 10.1. BT shall grant the Customer, upon full payment of the agreed fee, the non-exclusive, non-transferable right to use the results of the Services generated in connection with the Contractual Services or the Services Based on Time and Material in the course of and for the purposes of the Contract or the Services Based on Time and Material. The Customer shall have the non-exclusive, non-transferable right to use the software provided to it in accordance with the license terms of the System Contract or any diverging license terms for upgrades. Deviations from this software usage rule must be agreed separately in writing.
- 10.2. BT shall, to the extent that it is able to recognize such a situation, take all reasonable and feasible steps to ensure that the Services performed do not infringe the property rights of third parties. Should a third party lodge justified claims against the Customer arising from protected rights (patents, copyrights etc.) in connection with or on account of the supply of hardware and software such that the use thereof is impaired or prevented, BT shall, at its expense, have the option, without recourse to further claims, to either: a) modify or replace the hardware and software so that it does not infringe the third-party right but essentially continues to meet the agreed specifications; or b) exempt the customer from license fees for the use of the software in respect of third parties; or c) take back the hardware supplied along with all associated software and refund the purchase price. BT shall be entitled to require appropriate restitution from the Customer for use of the hardware and software. The Customer shall be obliged to inform BT immediately and is required to support BT in the defence of such claims. It is not permitted to recognize claims by third parties itself. Subject to these conditions, BT shall pay all the expenses incurred by the Customer.
- 10.3 Siemens BT may only use information to which it becomes privy in the course of performing the maintenance services for purposes of remote service, and, only in anonymised form, in order to undertake further development of its products. BT shall ensure that no information or data are disclosed or made accessible to third parties.
- 10.4 SiemensBT may copy data from the customer's systems to its own systems if this is indispensable in order to perform troubleshooting analysis or rectify faults
- 10.5 Upon request of the customer, Siemens BT shall, up to thirty days from the date of the access, disclose the name of the specific staff members who performed remote service.
- 11. Entry into force, term and termination of the Contract**
- 11.1. The Contract shall enter into force on signature by both contracting parties, it shall start on the date specified in the Contract (commencement of contract) and shall run at least until the end of the following calendar year (minimum term). The Contract shall then be renewed for a further calendar year at a time unless either Party terminates it in writing by giving three (3) months' notice before the end of that year.
- 11.2. Each contracting party shall be entitled to give written notice of termination of the Contract (including the GTC-MS pertaining thereto) with immediate effect for good cause, which shall apply in particular: a) in the event of severe, repeated or persistent breaches of contract caused through the fault of the other contracting party which are not fully remedied within a reasonable period of time despite being sent a written reminder; or b) if the other contracting party becomes permanently insolvent or bankruptcy or composition proceedings are applied for or opened against it or are rejected due to a lack of funds.
- 11.3. BT shall furthermore be entitled to give written notice of termination of the Contract (including these GTC-MS) with immediate effect if the System suffers serious damage or is rendered unusable as a result of improper treatment on the part of the Customer or third parties or as a consequence of force majeure. The Customer shall inform BT of such an event without delay. In this case remuneration shall be calculated *pro rata temporis*. BT reserves the right to claim damages.
- 11.4 After termination of the Contract, the Customer shall be entitled to continue to use the last version of the software installed by BT in accordance with the pertinent license conditions. After termination of the Contract, all further performance obligations on the part of BT shall expire.
- 11.5 Authorisation to perform remote access shall end at midnight at the end of the day on which the contract granting the remote access comes to an end.
- 11.6 Any party may suspend the remote access with immediate effect if the access is misused or if risks to the system in question are otherwise present. If this status continues for more than thirty days, the contract in question may be terminated.
- 11.7 Where the remote access is terminated, Siemens BT shall, for a period of 30 days from the date of termination, provide a file containing the customer's data for downloading in exchange for reimbursement of its costs, where the customer so requests in writing at the time of termination and where the customer's data are stored by Siemens.
- 12. Amendments to the contract**
- 12.1 Amendments and addenda to this Contract (including the GTC-MS, the Service Description and other annexes pertaining thereto) shall be in written form in order to be valid. BT reserves the right to change the Flat Rate informally in the cases specified in Clause 6.2. This requirement may only be waived in writing.
- 13. Applicable law and jurisdiction**
- 13.1. The Contract or the Services Based on Time and Material (including these GTC-MS) shall be governed by Swiss substantive law. The United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention) of April 11, 1980 does not apply to this contractual relationship.
- 13.2. **Zurich** shall have jurisdiction for all disputes arising as a result of this Contract or the Services Based on Time and Material unless a different jurisdiction is required by law. BT shall, however, also be entitled to take legal action against the Customer at its domicile or registered office.