

General Terms & Conditions for Development/Conversion of Hard-/Software - Siemens Switzerland Ltd (Version 01.2013)

1. Services to be provided by Supplier

- 1.1 The Supplier shall develop or convert the programs, program specifications or studies described in the Contract including all related documentation. In the case of programs it shall include the source and object codes. All this (hereinafter collectively called "Subject Matter") it shall then hand over to Siemens.

2. Cooperation between Contract Parties

- 2.1 Siemens shall provide to the Supplier all information which is necessary in the opinion of Siemens for the work on the Subject Matter. If the Supplier is of the opinion that the information is not sufficient, the Supplier shall notify Siemens of such in writing without delay.

- 2.2 The Supplier shall at any time upon request inform Siemens in writing to a reasonable extent as to the respective state of the work on the Subject Matter,

- inform Siemens as to the computing time used,
- allow Siemens access to documentation of work on the Subject Matter,
- facilitate for Siemens a discussion with its personnel responsible for the Subject Matter at a place to be agreed in each case.

- 2.3 In its work on the Subject Matter the Supplier shall apply the latest state of the art and technology in order to achieve the best possible result. In doing so the Supplier shall use and apply methods and processes agreed to with Siemens or comparable development methods and tools. The Supplier shall observe the directions of Siemens given in terms of the Contract. Siemens is however not authorized or permitted to give direct instructions to the personnel of the Supplier.

- 2.4 Each Contract Party shall nominate to the other a competent employee able to provide the necessary information for the performance of this Contract and able to make decisions or arrange for such decisions to be made.

3. Computing Time

- 3.1 Siemens shall make available to the Supplier computing time on a suitable computer system to the extent agreed in the Contract for the development of programs.
- 3.2 Any computing time required should be agreed as soon as possible with Siemens in writing.

4. Rights to Subject Matter, Open Source Software

- 4.1 The results of the work on the Subject Matter (hereinafter called "Results") shall become the property of Siemens upon creation in the respective stage of development. The Supplier shall keep the Results in safe custody for Siemens until the time of transfer. Siemens shall have the exclusive and transferable rights to use the Results, to change such Results or to publish or otherwise use such in any processed form as it sees fit.

- 4.2 In the event that the Results contain any inventions or concepts capable of being protected, Siemens may, at its own discretion and in its own name and identifying the inventor according to the applicable legal provisions, register any industrial property rights in any country, or maintain any such rights or abandon any such rights at any time. Any rights created by such registration shall belong to Siemens.

- 4.3 The Supplier shall ensure that any invention or concept arising from the work undertaken on the Subject Matter is transferred at no cost to Siemens.

- 4.4 In the event that any personnel of the Supplier and Siemens jointly make any invention, paragraph 4.2 shall apply accordingly to that share of the invention related to the Supplier.

- 4.5 The Supplier shall ensure that in any contracts with its personnel the rights detailed under paragraphs 4.1 to 4.4 are retained for Siemens exclusively and indefinitely and that such shall also not be affected by the ending of the contracts between the Supplier and its personnel. The Supplier shall make any other third party involved in the performance of the Contract subject to the duties detailed in sentence 1 hereof. Siemens shall be entitled to demand evidence of this.

- 4.6 It shall be forbidden for the Supplier (as well as for its employees and for any other persons engaged by the Supplier) to apply personal copyright notices to the Subject Matter arising in connection with this Contract.

- 4.7 The Supplier shall not make any third party software (including but not limited to Open Source Software as defined below) part of the Deliverables unless having obtained the prior written consent of Siemens.

As used herein, the term "Open Source Software" means any software that is licensed royalty-free (i.e., fees for exercising the licensed rights are prohibited, whereas fees for reimbursement of costs incurred by licensor are generally permitted) under any license terms or other contract terms ("Open License Terms") which allow every user to

modify such software and/or 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"), either of the following:

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

By means of example and without limitation, Open License Terms include the following licenses or distribution models: the GNU General Public License (GPL) and the GNU Lesser General Public License (LGPL).

The Supplier must provide Siemens before confirmation of the order, with the following:

- Source Code of the used Open Source software,
- List of all used Open Source data with a reference to any applicable license, as well as a copy of the entire license text,
- written confirmation stating that, by the normal use of Open Source software neither the services of the supplier, nor our products, shall be subject of "Copyleft effect", which, within the meaning of these General Terms and Conditions shall indicate, that the Open Source terms of a license request that certain services of the supplier, as well as works derived from it, may be further distributed only subject to conditions of the Open Source terms of a license, such as e.g. disclosure of the Source Code.

Notwithstanding anything to the contrary in this Agreement, if the Supplier is in breach of this Section 4.7, the Supplier shall indemnify, defend and hold harmless Siemens, its Subsidiaries, distributors and customers of Siemens as well as distributors and customers of Siemens' Subsidiaries, from any damage, loss, costs and expenses suffered by them as a result of any such breach.

5. Quality Control, Acceptance, Liability for Defects

- 5.1 The Supplier shall maintain a quality management system in its company which fulfils the requirements of DIN EN ISO 9001. Siemens may conduct quality audits at the place of the Supplier in accordance with DIN ISO 1001 1-1.

- 5.2 Supplier confirms that all delivered products including packaging are free from substances, which are listed in LoDS ('List of declarable substances'), and do not contain batteries and accumulators. Otherwise the Supplier shall inform us immediately if such substances, or batteries or accumulators are included in the delivered products. The up-to-date LoDS can be downloaded at <http://www.siemens.com/lods>. The Supplier shall declare such substances in the web database BOMcheck (www.BOMcheck.net) or in a reasonable format provided by Siemens no later than the date of first delivery of products.

The Supplier shall not ship any products containing declarable substances, batteries or accumulators without our prior written approval, otherwise the product shall be deemed defective.

Thereafter the Supplier guarantees that the delivered Products do not contain any radioactive contamination exceeding one tenth of the exemption values as defined by the Basic Safety Standards of the International Atomic Energy Agency (IAEA) in its current version.

- 5.3 After the Results are duly delivered to Siemens, Siemens shall conduct an acceptance check. In the event that any defects are discovered thereby, Siemens may refuse acceptance. Siemens shall notify the Supplier of such in writing and the Supplier shall rectify such defect without delay and at no cost and shall make available the respective corrected Results for acceptance. Siemens shall then once again conduct an acceptance check. Any further legal rights in relation to claims based on defects shall not be affected hereby.

- 5.4 The Supplier shall provide at least one week's prior written notice of the availability of the Results for acceptance. In the event that Siemens does not accept the Results after their being made available for any reason other than that of a defect the Results shall be deemed to have been accepted two months after the timely written notification of availability for acceptance.

- 5.5 Claims based on defects are subject to a limitation period of two years from the time of acceptance of the Results. The Supplier shall admit all complaints as raised in good time, without the need to meet any deadline.

- 5.6 In the event that any defect in the Results is due to circumstances for which Siemens is responsible the Supplier shall rectify such defect at the request of Siemens at the agreed reasonable prices and conditions.

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- 5.7 The Supplier shall guarantee that the Subject Matter and the Results do not infringe third-party rights. The Supplier shall in particular ensure that no software programs or program parts originating from third parties are incorporated into the software to be developed for Siemens. If the Supplier contravenes this obligation, it shall be liable – even after termination of the Contract – for all damage consequently incurred by Siemens.
- 6. Remuneration**
- 6.1 The agreed remuneration in the Contract shall be the full consideration for the services of the Supplier.
- 6.2 If any remuneration under the Contract is agreed on a time basis, proof of such time taken shall be provided by time sheets to be agreed upon between the Supplier and Siemens.
- 6.3 If any travel costs are to be reimbursed under the terms of the Contract, the Supplier shall consult with Siemens in advance as to the details, e.g. dates or the use of motor vehicles instead of train (2PndP class) or aircraft (Economy). The Supplier shall issue invoices to Siemens for the respective payments due in which the travel costs and accommodation costs as well as the turnover tax are separately identified. Travel times will not be compensated.
- 6.4 Payment shall be made, unless otherwise agreed, within 60 days net.
- 6.5 The period for payment shall commence as soon as the acceptance check has been successfully completed and the duly completed invoice has been received.
- 6.6 Payment shall not be construed as a recognition of the Subject Matter being in accordance with the Contract.
- 6.7 Recognition of Siemens as being late in payment shall be conditional on receipt of an invoice from the Supplier and on expiry of a specified deadline.
- 7. Hindrance of Supplier, Increase of Remuneration**
- 7.1 If the Supplier believes that it is hindered in the performance of the Contract by circumstances of any nature, the Supplier shall notify Siemens in writing of such without delay. If the Supplier is not responsible for the circumstances causing the hindrance the Contract Parties shall agree on a reasonable postponement of any agreed deadlines or dates. In the event that such timely written notification is not provided, the Supplier shall not later be able to rely on such hindrance.
- 7.2 If the Supplier believes that the requirements of Siemens according to paragraph 2.3 or any other circumstances for which Siemens is responsible may lead to an increase in work or computing time the Supplier shall notify Siemens of such without delay in writing. The Contract Parties shall then agree on a reasonable increase of the remuneration or an increase in the availability of computing time. In the event that the timely written notification is not provided, the Supplier has no right to claim any increase in the remuneration or the computing times available.
- 8. Introduction and Maintenance**
- 8.1 At the request of Siemens the Supplier shall provide support in preparations for application of the developed/converted programs and shall maintain the aforementioned programs. Insofar as such services do not belong to those services under the Contract not requiring separate remuneration, the Contract Parties shall agree on reasonable remuneration.
- 9. Awarding of Subcontracts, Confidentiality, Data Protection**
- 9.1 The Supplier shall not transfer contractual duties to any independent suppliers or any other third parties without the prior written approval of Siemens; in the absence thereof the Supplier shall utilize its own personnel. Even in cases where Siemens approves, the Supplier shall remain fully responsible for fulfillment of the Contract. If the Supplier itself or through sub-suppliers engages any employees delegated to Switzerland, it shall comply with the regulations of the Swiss federal law of October 8, 1999 on employees delegated to Switzerland and shall expressly draw its sub-suppliers' attention to this obligation (Art. 5 of the Swiss delegation law).
- 9.2 The Supplier shall treat as confidential, in relation to all third parties other than those detailed in paragraph 9.1 and involved in the performance, its work (as well as any knowledge and experience, documentation, terms of reference, business procedures or other information obtained from Siemens in terms of its work on the Subject Matter) and shall further treat as confidential the concluding of the Contract and the Results, provided that such is not legally released into the public domain, or subject to the prior written approval of Siemens and as long as such is used only for the intended purpose. This provision shall apply beyond the term of the Contract.
- 9.3 Any discussion on the Subject Matter between the Supplier and a customer of Siemens shall require in each individual case the prior written approval of Siemens.
- 9.4 Insofar as the Supplier is required to process personal data in its work on the Subject Matter, the Supplier shall comply with data protection laws, shall agree measures for data protection with Siemens and shall further enable Siemens to be informed as to compliance with such agreements.
- 9.5 The Supplier shall make all personnel at its operations who are involved in performance of the Contract and all third parties involved in performance of the Contract subject to duties corresponding to those detailed in paragraphs 9.2 to 9.4.
- 10. Release of Documentation**
- 10.1 The Supplier shall release all documentation and other materials which it has received in connection with the Contract or which have been produced in connection with the Contract including all copies without any delay after acceptance or, insofar as such is necessary for the fulfillment of any claims based on defects, immediately after the end of the expiry of the limitation period for claims based on defects.
- 11. Assignment of Claims**
- 11.1 The Supplier may assign any claims against Siemens provided that Siemens agrees to such in writing. Siemens may only refuse such for important reasons.
- 12. Special Rights of Termination**
- 12.1 In the event that the Supplier stops payment or in the event that a temporary insolvency administrator is appointed or insolvency procedures in relation to the assets of the Supplier are opened, Siemens may in whole or in part withdraw from the Contract. In case of such withdrawal Siemens may utilize existing facilities or supplies and services provided by the Supplier to date for the continuation of the work in return for reasonable remuneration.
- Siemens shall remain entitled to terminate (or to withdraw from) the Contract without advance notice if Siemens considers the development/modification of the software to be no longer attainable (or attainable only with disproportionate additional effort), or if Siemens for any other reason wishes to cease pursuing the Contract.
- In the event of premature termination (revocation) of this Contract Siemens shall reimburse the Supplier in respect of costs verifiably incurred up to the time of termination and resulting directly from this Contract, less any expenditure saved, insofar as these costs have not already been reimbursed under the terms of this Contract. The Supplier shall not be entitled in consequence of termination to any claims for performance or damages going beyond this scope.
- 13. Code of Conduct for Siemens Suppliers**
- 13.1 The supplier is obliged to comply with the laws of the applicable legal system(s). In particular, the supplier will not engage, actively or passively, nor directly or indirectly in any form of bribery, in any violation of basic human rights of employees or any child labor. Moreover, the supplier will take responsibility for the health and safety of its employees, the supplier will act in accordance with the applicable environmental laws and will use best efforts to promote this Code of Conduct among its suppliers.
- In addition to other rights and remedies we may have, we may terminate the contract and/or any purchase order issued there under in case of breach of these obligations by the supplier. However, provided that supplier's breach of contract is capable of remedy, our right to terminate is subject to the proviso that such breach has not been remedied by the supplier within a reasonable grace period set by us.
- 14. Export Control**
- 14.1 Following concluding of the Contract, the Supplier shall without delay provide the relevant information in connection with export regulations in accordance with the supplier declaration forms (inland or international) which we provide and which the supplier must complete in full. This information includes in particular (i) full and clear product designation, (ii) Export Control Classification of Switzerland or of the supplier's country, (iii) US Export Control Classification, (iv) customs tariff number and (v) country of origin and certificate of origin. Where suppliers or supplies from outside Switzerland are concerned, the details on country of origin and preference on the supplier declaration are purely informative. They must therefore be repeated on the acknowledgement of order, consignment invoice and commercial invoice.
- 15. Disclosure of the Business Relationship and of Data and Information**
- 15.1 The Supplier agrees that all data and information required for the business relationships or resulting from said relationships, especially contractual documents and papers as well as data and information necessary for the performance of the contract of and about the Supplier and his auxiliary persons (Hilfspersonen) may also be stored outside Switzerland. Furthermore, all this data and information may be disclosed to Siemens AG as well as to their associated companies for corresponding processing, especially for

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providing services, fulfillment of legal requirements or for Siemens-internal audit and/or supervisory requirements; this always in compliance with respectively applicable data protection laws.

16. Collateral Agreements

- 16.1 Any collateral agreements shall be made in writing to be effective. This written-form requirement can only be waived in writing.

17. Applicable Law

- 17.1 Contractual relations shall be governed by Swiss substantive law. The United Nations Convention on Contracts for the International Sale of Goods (CISG, Vienna Convention) of April 11, 1980 shall not apply.

18. Place of Jurisdiction

- 18.1 The place of jurisdiction shall be Zürich. Siemens shall however also be entitled to bring an action against the Supplier at the place of its corporate headquarters.