



Terms & Conditions for Sale Telecomunicación, Electrónica y Conmutación S.A.

1. General

- 1.1 The scope, quantity, quality, functionality and technical specifications of any goods, equipment, documentation, software, work or services to be provided by Siemens (collectively referred to as "**Services**") are exclusively defined as the case may be either in the order confirmation of Siemens or the Contract signed by the Customer and Siemens.
- 1.2 The offer letter from Siemens together with these terms and conditions and those other documents expressly identified in the offer letter as forming part of the contract shall together constitute the entire agreement between the parties (the "**Contract**"). Any terms and conditions of the Customer shall apply only where expressly accepted in writing by Siemens.
- 1.3 References in the Contract to "**Siemens**" are to the Siemens, S.A. with CIF-A 28006377 and address in Ronda de Europa, 5, 28760 Tres Cantos (Madrid). References to the "**Customer**" are to the legal entity to whom the offer letter is addressed.
- 1.4 Works which are not explicitly described in the Contract are not included in the scope of the Services. Unless explicitly agreed otherwise, operating materials, consumables, spare and wearing parts shall not be included in the remuneration for the Services.
- 1.5 Siemens is entitled to provide the Services via a secure remote access ("**Remote Services**").

The Customer shall verify that the security concept for the remote access proposed by Siemens (see Common Remote Service Platform cRSP – security concept in its current version) is compatible with the technical capability of Customer and the Customer's safety, cyber security and other requirements. The Customer remains at all times responsible for the security of humans, machines and the serviced objects.

The Customer shall grant Siemens access to the serviced objects via remote access. If contractually agreed with the Customer, the Customer shall activate and accept each remote access of Siemens.

The Customer shall provide an internet connection (e.g. broadband cable connection, ISDN connection), which meets the technical requirements for a remote connection. The costs for such internet connection shall be borne by the Customer.

Siemens is entitled to modify or amend the existing security concept, so long as the performance of Services via remote access is not compromised. Prior to implementing an amended security concept, Siemens will inform the Customer of the amended security concept. In the event the implementation is contrary to reasonable interests of the Customer, the Customer shall give written notice to Siemens within 4 weeks after receipt of the notice of the intended change in concept. In the event Siemens and the Customer are unable to agree on the security concept, the Customer is entitled to terminate the Contract in respect of such Services objects that include Remote Services. In any event Siemens may implement the amended security concept 8 weeks after notifying the Customer.

2. Right of Use

- 2.1 Except as expressly otherwise agreed in this Contract, as between the parties all intellectual and industrial property rights in the Services, in all documents provided by Siemens in connection with this Contract (the "**Documents**") and in all software, hardware, knowhow ("**IPR**") and other things provided

with or as part of the Services and the Documents shall be the exclusive property of and vest in Siemens. The Customer shall not reverse engineer, decompile, or reproduce the Services or goods delivered in connection with such Services or parts thereof and shall ensure that third parties will not reverse engineer, decompile or reproduce the Services or goods in connection with such Services or parts thereof in each case to the extent mandatory law does not prohibit such limitation.

- 2.2 The Customer may use the Documents unmodified and to the extent necessary for operation and routine maintenance of the serviced objects by the Customer's own personnel, unless explicitly agreed otherwise in writing by Siemens.
- 2.3 If the Services include Siemens software, such software is licensed under the license terms contained in the software documentation, the software itself or in the attached license terms (in each case the "**applicable license conditions**"), which shall prevail over this Clause 2. The software is issued in object code without source codes. The license hereunder only grants the non-exclusive right to use the software as described in the applicable license conditions or, if there are no applicable license terms, for the purpose of operation and routine maintenance of the Services.
- 2.4 The Services may include third party software. Insofar as specific license terms of the third party licensor apply, Siemens will provide such license terms together with the Services. The Customer shall comply with such third party license terms.
- 2.5 Insofar as the software contains Open Source Software ("**OSS**"), Siemens will provide the applicable OSS license terms together with the Services. The OSS license terms shall prevail over this Contract. Details regarding any third-party software and OSS contained in the Services are available in the software documentation (e.g. README_OSS).
- 2.6 The rights granted in Clause 2 shall be transferable to a third party only together with the transfer of ownership of all of the serviced object to that third party.
- 2.7 Without prejudice to the Customer's intellectual property rights and subject to compliance with applicable law, Siemens and its Affiliates may for its own business purposes collect, use, modify, and copy any data received in connection with the Services.

3. Prices and Terms of Payment

- 3.1 Unless agreed otherwise in writing, prices exclude insurance and any other additional charges (such as inspections by third parties). The price payable by the Customer under this Contract shall be referred to in this Contract as the "**Contract Price**".
- 3.2 The Customer shall bear all incidental costs, e.g. travel expenses, daily allowances, in addition to the Contract Price.
- 3.3 The Contract Price is exclusive of any indirect taxes (such as property, license, sales, use, value added or similar tax) and/or any duties, customs or public charges related to the Contract. The Customer agrees to pay to or reimburse Siemens for any taxes, customs, duties or other public charges levied on Siemens in relation to the Services. All payments shall be made to Siemens' bank account without deduction (e.g. deduction of withholding tax) within 30 days after issuance of the invoice. If the Customer is required to make a deduction by law, the sum payable shall be increased so that Siemens receives a net amount equal to the amount it would have received without such



Terms & Conditions for Sale Telecomunicación, Electrónica y Conmutación S.A.

deduction. The Customer shall provide to Siemens tax receipts from the relevant tax authorities in connection with the payments in due course.

3.4 Without prejudice to any other rights it may have, in case of delay of the agreed payment deadline, Siemens may charge interest at 9 percentage points above the current base lending rate of the European Central Bank on any overdue payments.

3.5 Each party must pay all sums that it owes to the other party under this Contract free and clear without any set-off, counterclaim, deduction or withholding of any kind, save as agreed otherwise in writing or as may be required by law.

3.6 Siemens reserves the right to adjust the Contract or Quotation Price for any escalation in the cost or transport of materials (including without limitation the cost of stainless steel, nickel and other metals) that occurs in the time period from the date of our quotation and up to and including the date we or any company of the Siemens Group orders materials for the manufacture or assembly of our supply either the time of invoicing ('Contract Price Adjustment'). Any Contract Price Adjustment shall be based solely on an escalation of our direct cost. In case Siemens requests a Contract Price Adjustment in excess of 5% of the previous price, the Parties will reach an agreement on the impact of such increases

4. Rights and Obligations of Siemens

4.1 Siemens begins with the Services within a reasonable period of time and performs the Services during its normal service hours (Monday to Friday, 8.00 a.m. to 5.00 p.m. except for national and/or local holidays) or during the specifically agreed service hours, unless otherwise agreed in writing or stated in the Contract.

4.2 Siemens reserves the right to execute the Services using a different but technically equivalent method to that set out in the Contract, provided that any such modification does not materially change the agreed characteristics/specifications of the Services to the detriment of the Customer.

4.3 Siemens is entitled to subcontract Services to subcontractors. If Siemens commissions subcontractors, Siemens remains responsible for these subcontractors within the scope of the statutory regulations.

Unless otherwise stated in this Contract, Siemens shall not have any responsibility for Customer's scheduling, planning, project-management, quality programs, health, safety, security or environmental management and for any resulting time extension or cost-overrun with the Services.

Siemens shall be responsible for obtaining any work permits required by its personnel. Siemens shall only use suitably qualified and experienced personnel and shall have the right to replace any of its personnel at any time with equivalent personnel.

4.4 Upon Siemens' request, the Customer shall inform the Siemens personnel in time of all their obligations towards the local authorities (such as police registration, etc.) and shall assist such personnel in their dealings with the local authorities. Customer shall provide Siemens all support reasonably required in the procurement of entry, residence and working permits.

Any impossibility or delay in obtaining the necessary entry residence or working permits which is not solely attributable to Siemens shall not constitute a breach of Siemens' contractual obligations and Siemens shall be entitled to an adjustment in deadlines for performance.

4.5 To the extent the Services include supervision, Siemens' only obligation is to provide correct instructions and it shall not be liable for the performance of third parties or Customer's personnel.

5. Delay

5.1 Any agreed dates for performance of the Services or any part of them shall be extended by a reasonable period of time if and to the extent that Siemens is delayed or impeded in the performance of its obligations by any third party or by the failure of the Customer to perform its obligations. This includes without limitation the delivery of required documents (such as necessary permits and approvals), timely performance of any work to be undertaken by the Customer or any third party appointed by the Customer, and compliance with the terms of payment.

5.2 If Siemens does not meet any binding dates solely due to the fault of Siemens, the Customer shall be entitled to liquidated damages amounting to 0,5% of the price of the delayed part of the Services per complete week of delay, in which the Customer suffered loss as a result of such delay. Liquidated damages payable in case of delay shall be limited to 5 % of the price of the delayed part of the Services.

If Services are provided on basis of a flat rate fee, the value of the service fee applicable to one month shall be used for calculating such liquidated damages and the maximum amount of liquidated damages.

5.3 Any other liability of Siemens and any claim, rights and remedies of the Customer in case of delay except as expressly stipulated in this Clause 5 and in Clause 16.2 a) below shall be excluded, to the extent permissible by law.

5.4 If the Customer, the Customer's contractors, or any other third party put in charge by the Customer causes a delay to the provision of the Services, the Customer shall reimburse Siemens all additional costs and expenses incurred due to such delay.

6. Force Majeure

6.1 A "**Force Majeure Event**" means any event which is beyond the reasonable control of a party or its subcontractors, which could not have been prevented by good industry practice and which results in a party (the "**Affected Party**") being unable to perform or being delayed in performing in whole or in part its obligations under this Contract. Force Majeure Events include, among others, acts of war, riot, civil commotion, terrorism, natural disaster, epidemic, strikes, shortages of electronic components, plastic, wood, or others that affect or may affect normal commercial activities lock-outs, attacks on Siemens' IT systems (such as virus attacks, hacker attacks), non-issuance of licenses, permits or approvals, or any other act or failure to act by any public authority, or embargos or any other trade sanctions imposed by the European Union (EU) or the United States of America (U.S.) or any public authority within EU or U.S. territory or by the United Nations.

6.2 If a Force Majeure Event occurs, the Affected Party will be deemed not to be in breach of its obligations under the Contract for so long as and to the extent necessary to overcome the effects of the Force Majeure Event.

6.3 The Affected Party shall notify the other party as soon as reasonably practicable of the Force Majeure Event and of its affected obligations.

6.4 If one or more Force Majeure Events and their effect last for a period of 180 days in aggregate either party may terminate the



Terms & Conditions for Sale Telecomunicación, Electrónica y Conmutación S.A.

Contract by giving to the other a written notice of termination with regard to the part of the Services not yet provided. With regard to the part of the Services not performed, Siemens shall be entitled to reimbursement from the Customer of its unavoidable costs related to such termination.

7. Obligations of the Customer

7.1 The Customer shall apply for and obtain all necessary licenses, permits and approvals required for commissioning, acceptance and use of the Services.

7.2 The Customer shall do all that is required for Siemens to commence the performance of the Services in time and to carry out the Services in an uninterrupted manner. In particular, the Customer shall at its cost:

- (i) support Siemens in problem analysis to the extent necessary, e.g. providing incident reports and error messages.
- (ii) coordinate third parties commissioned by the Customer.
- (iii) provide up to date documents, drawings of and information about the serviced objects before commencement of the Services and without specific request by Siemens. Siemens shall be entitled to use the Customer's documents for the provision of the Services and make them available to Siemens' subcontractors providing Services.
- (iv) provide current data back-up of the current software version, including the stored data and the system parameters on an appropriate data carrier as well as the provision of a copy of the respective data carrier. Execution of data retrieval if necessary.
- (v) obtain of any permits, approvals, consents or authorizations from any relevant authority, except to the extent that these can only be obtained by Siemens.
- (vi) bear costs related to the transportation of the serviced objects to Siemens if the Services are conducted at Siemens's premises.

7.3 If and to the extent the Services will be performed at the Customer's premises, the Customer shall at its cost additionally:

- (i) provide unrestricted access to the serviced objects, timely performance of all preparatory work and establishment of the required operating conditions and infrastructural requirements necessary for the performance of the Services (e.g. internet access, electricity and telephone).
- (ii) provide briefings and trainings, including provision of information regarding relevant hazards for humans and machines resulting from the provision of Services, as well as regarding the applicable safety regulations of Customer.
- (iii) ensure and monitor that the serviced objects are in a safe condition so that there are no risks for humans or machines during the performance of the Services. The Customer shall ensure that the serviced objects are disconnected from the mains during the performance of the Services. The switching authorization for the serviced objects and the respective responsibility always remains with the Customer. The same applies to the implementation of other required operational and legal safety measures, as well as to the provision of (special) protective clothing and devices as well as the provision of security and escort personnel to escort the service technicians in accordance with the requirements of work safety, and upon Siemens' request, the provision of a second person required for accident prevention.
- (iv) provide suitably qualified personnel during the performance of the Services with the necessary experience and know-how to operate the serviced objects. Furthermore, the personnel must be able to make and implement any necessary decisions concerning the

Services. Unqualified personnel may be rejected by Siemens and shall be replaced at the Customer's cost.

- (v) provide technical resources and auxiliary equipment (e.g. ladders, scaffolding, lifting devices, special tools as well as on-site transportation) with the required operating personnel as well as the operating and production resources and materials and consumables necessary for the performance of the Services.
- (vi) provide power and water supplies together with the necessary connections up to the required location on site as well as heating and general lighting and, if necessary, air-conditioning and ventilation.
- (vii) be responsible for adequate safety precautions on site against theft, damage, destruction and other adverse factors. Material lost or damaged shall be replaced or repaired at the Customer's cost.

7.4 If Services cannot be performed in the required manner or can only be performed upon delay on grounds for which Siemens is not responsible, particularly because the Customer has not performed or timely performed its general or special duties of cooperation or the Customer has culpably missed an agreed deadline, Siemens may separately charge to the Customer the additional expenses incurred, including all waiting periods. Agreed-upon dates and deadlines shall be prolonged to a reasonable extent.

7.5 The Customer is solely responsible for the conception, implementation and maintenance of a holistic, state-of-the-art security concept to protect its enterprise, plants, systems, machines and networks (including any part of the Services) against Cyberthreats. "Cyberthreat" means any circumstance or event with the potential to adversely impact the Customer's plants, systems, machines and networks (including any part of the Services) via unauthorized access, destruction, disclosure and/or modification of information, denial of service attacks or comparable scenarios. Such concept should inter alia include:

- a) installation of Updates as soon as they are available in accordance with the installation instructions given by Siemens and using the latest Services version (this might include the purchase of upgrades of hardware and software by the Customer). "Update" means any software which primarily contains a correction of software errors in the Services, an Update that fixes a vulnerability ("Patch") and/or minor enhancements or improvements of the Services, but does not contain significant new features. Use of versions that are no longer supported, and failure to install the latest Updates may increase Customer's exposure to Cyberthreats;
- b) complying with security advisories, installing Patches and implementing other related measures, published, among others, under <http://www.siemens.com/cert/en/cert-security-advisories.htm>.
- c) regular vulnerability scanning, and testing, provided however, that (i) it is not performed while the Services are in use, (ii) the system configuration and security level of the Services are not modified; and (iii) if vulnerabilities are identified by the Customer, the Customer shall align with Siemens, shall not refuse acceptance of the Services if Siemens classifies the vulnerability to be irrelevant, and shall not disclose the vulnerability without the prior written consent from Siemens;
- d) Implementing and maintaining a state-of-the-art password policy;
- e) only connecting the Customer's systems, machines and components as well as the Services to an enterprise network or the internet if and to the extent such a connection is necessary and only when appropriate security measures (e.g. firewalls, network client



Terms & Conditions for Sale Telecomunicación, Electrónica y Conmutación S.A.

authentication and/or network segmentation) are in place and the manufacturers' guidelines are fulfilled;

- f) minimizing the risk of a malware infection (e.g. through content of USB-storage media and other removable storage devices connected to the Products) through malware scanners or other appropriate means.

- 7.6 The Customer acknowledges that Services on site may generate and/or uncover hazardous waste which is subject to specific legal or regulatory requirements under applicable laws "hazardous materials" or "hazardous waste".

If Siemens discovers hazardous materials like asbestos, environmentally hazardous substances, geological or geothermal conditions, archaeological findings or any other local conditions which adversely affect the Services, the Customer shall be liable for any required remediation and also reimburse Siemens for any additional costs and expenses. Siemens shall also be entitled to a reasonable extension of time. The Customer shall, at its expense, provide containers complying with all legal and regulatory requirements and shall handle, store and dispose of hazardous waste in accordance with the applicable laws.

- 7.7 Siemens shall comply with the Customer's site rules and regulations when performing Services on the Customer's premises, provided that the Customer informs Siemens, in writing, of all relevant site rules and regulations in force at the premises within a reasonable period prior to performance of the Services.

The Services shall not be carried out in unhealthy or dangerous surroundings. All the necessary safety and precautionary measures shall have been taken by the Customer, at no cost to Siemens, before Services commence and shall be maintained by the Customer during Siemens' performance of the Services.

- 7.8 For any portion of the Services performed by Siemens and/or its subcontractors on a time basis, the Customer shall confirm Siemens on a weekly basis of the hours worked by Siemens' and/or its subcontractors' personnel.

8. Changes to the Services, Variations

- 8.1 Either party may at any time request in writing changes, modifications or additions to the scope of the Services (hereinafter referred to as "**Variation**"). Upon receipt of such Variation request, Siemens shall provide the Customer with a written quotation for the requested Variation, specifying the effects of the requested Variation on the Contract, including any necessary adjustment of the Contract Price, time schedules and agreed dates, scope of the Services and any other affected provisions of the Contract.

If the Customer wishes to proceed with a requested Variation on the basis of a Siemens Variation quotation, the Customer shall notify Siemens thereof in writing within 14 days of receipt of such Variation quotation. Siemens is not obliged to give effect to the Variation until it has been agreed in writing by the parties.

- 8.2 If applicable laws, rules and regulations, engineering standards and codes of practice, and decisions or guidance issued by courts or public authorities are amended or added to after the date of Contract signature, Siemens shall be entitled to an adjustment of the Contract, including inter alia an adjustment of the Contract Price to reflect any additional costs to be incurred by Siemens, the time schedules and scope of Services, as necessary in order to compensate for any adverse effects or additional requirements deriving from such changes.

9. Acceptance and Risk of Accidental Damage

- 9.1 Unless otherwise agreed in writing, an acceptance of the Services is not required. Where the parties have agreed on an acceptance in writing, the Customer shall declare acceptance within 1 week of completion of performance of the Services by Siemens, or of the notice of completion, whichever is earlier. The Customer is not entitled to refuse acceptance due to non-significant defects. Acceptance shall be deemed to have occurred within 1 week of completion of performance by Siemens or if the serviced objects have been put into operation.

- 9.2 All costs and expenses of the Customer and any third parties (other than those of Siemens' own personnel or contractors) incurred in connection with inspections, tests, approvals, acceptance procedures etc. shall be borne by the Customer.

- 9.3 The Customer shall bear the risk of accidental damage to or loss of the Services and the serviced objects. Goods and materials included in the Services are delivered EXW (Incoterms 2010).

10. Defects Liability

- 10.1 Siemens shall be liable for the proper performance of the Services in accordance with this Contract. If Siemens delivers materials and goods in connection with the Services, Siemens shall be liable to the Customer for any non-conformity with express terms of this Contract resulting from circumstances existing at the time of the transfer of risk.

- 10.2 The Customer shall immediately notify Siemens in writing of any defective Services or defective materials and goods without undue delay. The Customer's claims in respect of defects shall be excluded for any apparent defects if the Customer has failed to do so.

Upon such written notification, Siemens shall be given a reasonable period of time and opportunity to re-perform the Services and/or, at its option, repair or replace defective materials or goods. The Customer shall grant Siemens working access to the defective Services, material, or goods, and shall undertake any necessary disassembly and reassembly, and shall provide access to operation and maintenance data, all at no charge to Siemens. Upon Siemens' request, the Customer shall ensure that the title to the replaced parts/items shall pass to Siemens.

- 10.3 The defects liability period for any part of the Services shall expire 12 months after provision of the defective Services or acceptance if agreed. For materials and goods, the defects liability period shall expire 12 months after the transfer or risk.

For re-performed Services and replaced or repaired materials and goods, the defects liability period is 6 months from the date of re-performance, replacement, or repair, if the original defects liability period expires earlier. In any event, the defects liability period shall end no later than 24 months from the beginning of the original defects liability period.

- 10.4 There shall be no warranty claim for insignificant deviations from the agreed quality, of only minor impairments of usability, for normal wear and tear, or impairments due to improper or negligent handling by Customer, unsuitable equipment provided by Customer, non-reproducible software errors or special external influences which are not identified within the Contract. In addition, software errors are only deemed a defect if the defect occurs in the most current software version at the given time.

- 10.5 Siemens does not warrant or guarantee that any part of the Services will be secure from Cyberthreats and does not contain



Terms & Conditions for Sale Telecomunicación, Electrónica y Conmutación S.A.

any vulnerability. If software is defective, Siemens shall only be obliged to provide the Customer with an updated version of the software in which the defect has been remedied when Siemens can be reasonably expected to provide such updated version or, if Siemens is only licensee, such updated version is reasonably available from Siemens' licensor. If the software has been modified or individually developed by Siemens, Siemens shall in addition provide the Customer with a workaround or other interim error correcting solution until the provision of an updated version of the software in which the defect is remedied, if such workaround or interim solution is feasible at reasonable expense and if otherwise the Customer's business operations would be stopped or substantially impeded.

- 10.6 If Siemens re-performs allegedly defective Services and it is ultimately not established that the Services were defective, the Customer shall pay Siemens for such re-performance.
- 10.7 Any other liability of Siemens and any claims, rights and remedies of the Customer in case of defective Services or defects, shall be excluded except as expressly stipulated in this Clause 10 or - in case Siemens failed at least three times in remedying/re-performing - in Clause 16.2 b). All warranties, representations, conditions, and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Contract.

11. Intellectual Property

- 11.1 If a third party asserts legitimate claims against the Customer that the Services infringe an IPR owned by such third party, then subject to the following provisions of this Clause 11, Siemens shall, at its option and expense, either
- obtain a right to use the relevant IPR in connection with the Services;
 - modify the works forming part of the Services so as not to infringe the relevant IPR; or
 - replace the infringing part of the Services.

If, in the opinion of Siemens, none of the foregoing is reasonably possible, Siemens may take back the relevant part of the Services and reimburse the price for such part.

- 11.2 Siemens' obligations in Clause 11.1 are subject to the following conditions:
- The Customer has immediately notified Siemens in writing of the third party's claim and furnished Siemens with a copy of each communication, notice or other action relating to the alleged infringement,
 - the Customer does not acknowledge an infringement and provides Siemens with the authority, information and assistance reasonably required by Siemens to defend or settle such claim, and
 - Siemens is given sole control of the defence (including the right to select counsel), and the sole right to settle such claim.

If the Customer ceases to use the works forming part of the Services or any relevant portion thereof, it shall notify the third party in writing that its cessation of use is not an admission of IPR infringement.

- 11.3 Any claims of the Customer shall be excluded if the Customer (including its agents, employees or contractors) is responsible for the IPR infringement. The Customer shall be deemed responsible for the claimed IPR infringement if, without limitation, it was caused by (i) specific demand of the Customer (ii) use of the works forming part of the Services for a purpose or in a manner not foreseeable by Siemens, (iii) a modification of the works forming part of the Services by the Customer or (iv) use of the works forming part of the Services in connection with other equipment.

- 11.4 This Clause 11 sets forth Siemens's entire liability for infringement of third party IPRs. Any other claims, rights and remedies of the Customer shall be excluded.

12. Liability

Unless explicitly stipulated in this Contract, this Clause 12 shall exclusively govern the liability of Siemens for damages, costs and expenditures, regardless of the legal theory upon which it is based, including, but not limited to liability in Contract, in tort (including negligence), misrepresentation, indemnity, under warranty or otherwise.

- 12.1 Siemens shall be liable for bodily injuries and for intentional acts or omissions pursuant to the applicable law.
- 12.2 Siemens shall in no event be liable, whether pursuant to any indemnity or in contract, tort (including negligence and statutory duty) or otherwise for loss of profit or revenue, loss of production, interruption of operations or loss of use, cost of capital, loss of interest, loss of information and/or data, for claims arising from Customer's contracts with third parties, loss of hydrocarbons, loss of power, voltage irregularities, frequency fluctuations, cost of purchased or replacement power or for any indirect or consequential damage.
- 12.3 Siemens' total liability, whether pursuant to any indemnity or in contract, tort (including negligence and breach of statutory duty) or otherwise arising by reason of or in connection with the Contract shall not exceed 50% of the Contract Price, if a lump sum has been agreed, or 50% of the fees paid in the 12 months preceding the month in which the claim arose if no lump sum has been agreed.
- 12.4 Any limitations of liability set forth in this Contract shall also apply for the benefit of Siemens' Affiliates, Siemens's group companies, subcontractors, employees, agents or any other person acting for Siemens.
- 12.5 Any and all liability of Siemens under this Contract shall cease with the expiry of the defects liability period of the Services.
- 12.6 Any, rights, and remedies of the Customer against Siemens that are not expressly stipulated in the Contract shall be excluded.

13. Assignment and Sub-contracting

- 13.1 The Customer may not assign this Contract or any part thereof without Siemens' prior written approval.
- 13.2 Siemens may transfer, assign or novate the Contract or any part of it to an affiliated company ("Affiliate"), being any legal entity ("Company") which directly or indirectly is controlled by Siemens, controls Siemens or is controlled by a Company which directly or indirectly controls Siemens.
- 13.3 Siemens shall further be entitled to assign the whole Contract or a part of it to any third party, in the event of a sale or other transfer of the business or a part of the business of Siemens to a third party.
- 13.4 Siemens may assign the rights of credits to Siemens Renting, S.A.I. with C.I.F. A-81440786 by simply informing the Customer.
- 13.5 Siemens may sub-contract parts (but not all) of the Services.

14. Confidentiality. Data Protection

- 14.1 The parties shall use any documents, know-how, data or other information provided by the other party ("**Information**")



Terms & Conditions for Sale Telecomunicación, Electrónica y Conmutación S.A.

exclusively for the purpose of this Contract and keep the same confidential subject to the following. The parties may disclose Information to employees of the receiving party and to third parties who reasonably need to know such Information for the purpose of the Contract provided such employees and third parties are bound by equivalent confidentiality obligations. The party disclosing Information shall be held liable for a breach of such obligations by its employees or a third party.

14.2 This confidentiality obligation shall not apply to Information which

- a) is or becomes part of the public domain other than by fault of the receiving party;
- b) is disclosed to the receiving party in good faith by a third party who is entitled to make such disclosure;
- c) is developed independently by the receiving party without reliance on Information;
- d) was known to the receiving party prior to its disclosure by the other party; or
- e) is required to be disclosed by law (subject to the receiving party's obligation to notify the disclosing party in a timely manner of such requirement).

14.3 The Customer shall only be entitled to take photographs or videos or to otherwise record the performance of the Services with Siemens's prior consent. In addition, only personnel of the Customer who operate the plant shall be entitled to be present during the carrying out of the Services by Siemens.

14.4 This confidentiality obligation shall survive the expiration or termination of this Contract for 5 years.

14.5 Siemens and the Customer shall comply with the statutory provisions relating to protection of personal data. The Customer is obliged to create the prerequisites required by law (e.g. to obtain declaration of consents) to enable Siemens to perform the Services without any breach of law. The Customer is advised to take appropriate measures – as far as possible – to prevent access of Siemens to personal data or trade secrets of the Customer while providing the Services. In the event that it cannot be prevented that Siemens is granted access to personal data of the Customer, the Customer is obliged to inform Siemens in due time before the Services are performed. The Customer and Siemens shall then agree on the actions to be taken.

15. Suspension

15.1 Siemens may suspend performance of its obligations under the Contract, if (i) the Customer is in delay with any payment or in providing any payment security required under this Contract for more than 30 days or (ii) the Customer fails to perform those of its obligations necessary for Siemens to perform the Services, or (iii) the Customer otherwise materially breaches the Contract.

15.2 If Siemens suspends the Contract in accordance with Clause 15.1 or in the event the Customer suspends the Contract without the express written agreement of Siemens, the Customer shall become immediately liable to pay Siemens for all parts of the Services already provided. The Customer shall further reimburse Siemens all reasonable additional costs and expenses incurred as a result of such suspension (e.g. payments to subcontractors, cost of waiting time, demobilization and remobilization, etc.). Any contractual dates shall be extended for a reasonable period to overcome the effects of the suspension.

16. Termination

16.1 Not applicable

16.2 Save as provided under Clause 6.4 and Clause 16.1, the Customer may terminate the Contract only in the circumstances

set out below and in each case upon 14 days written notice to Siemens:

- a) in the event of delay, if the maximum liquidated damages under Clause 5.2 are payable, a reasonable additional period of time for performance of the Services has been granted to Siemens and has expired and Siemens within that time has not provided a commitment to pay further liquidated damages exceeding the before-mentioned maximum liquidated damages in respect of the continuing period of delay, or
- b) in the event Siemens has materially breached the Contract and has not remedied the breach within a reasonable period after receiving a written notification of the breach from the Customer.

16.3 Any termination by the Customer shall not affect those parts of the Services already performed in accordance with the Contract prior to the termination. In the event of termination of the Contract in accordance with Clause 16.2, the Customer shall remain liable to pay Siemens for all parts of the Services already performed prior to termination. The Customer shall be entitled to compensation for the costs incurred in excess of the Contract Price if it had the defective Services completed by a third party. For the avoidance of doubt, Clause 12 shall apply in case of termination.

16.4 Notwithstanding any other rights it may have under this Contract, Siemens may terminate the Contract

- a) if the Customer comes under the direct or indirect control of any competitor of Siemens, or
- b) if the Customer materially breached the Contract and has not remedied the breach within a reasonable period after a notification by Siemens or is in delay in making any payment or in providing any payment security required under this Contract for more than 30 days; or
- c) if the Contract has been suspended for more than 60 days.
- d) If the Customer does not comply with the Health and Safety regulations for Siemens employees
- e)

16.5 In the event of termination by Siemens, Siemens shall be entitled to recover from the Customer the Contract Price less any saved or avoided expenditure and any additional cost and expenses incurred by Siemens due to such termination.

17. Dispute Resolution, Applicable Law

17.1 The Contract and any dispute or claim arising out of, or in connection with, it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the substantive laws of Spain. The UN Convention on Contracts for the International Sale of Goods shall not apply.

17.2 All disputes arising out of or in connection with the Contract including any question regarding the termination or any subsequent amendment of the Contract shall be finally settled by the courts and tribunals of the city of Madrid, Spain.

17.3 The language to be used in the arbitration proceeding shall be Spanish. Any order for the production or disclosure of documents shall be limited to the documents on which each party specifically relies in its submission(s).

18. Export Regulations

18.1. If Customer transfers to a third party hardware and/or software and/or technology (including corresponding documentation,) delivered by Siemens ("Goods"), or works and services



Terms & Conditions for Sale Telecomunicación, Electrónica y Conmutación S.A.

- (including all kinds of technical support) performed by Siemens ("Services"), Customer shall comply with all applicable national and international (re-) export control regulations. In any event of such transfer of Goods and/or Services, Customer shall comply with the (re-) export control regulations of Spain, of the European Union ("EU") and of the United States of America ("USA").
- 18.2 Prior to any transfer of Goods and/or Services to a third party, Customer shall in particular check and guarantee by appropriate measures that
- there will be no infringement of an embargo imposed by the EU, USA and/or by the United Nations by such transfer, by brokering of contracts concerning Goods or Services or by provision of other economic resources in connection with Goods or Services also taking into account any prohibitions to circumvent these embargos (e.g., by undue diversion);
 - such Goods 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 has been obtained;
 - the regulations of all applicable sanctioned party lists of the EU and USA concerning the trading with entities, persons and organizations listed therein are considered;
 - Goods and Services within the scope of the respective Annexes to EU Regulations Nos. 833/2014 and 765/2006 as well as of Annex I to EU Regulation No. 2021/821 (in their current versions, respectively), will not, unless permitted by EU law, be (i) exported, directly or indirectly (e.g., via Eurasian Economic Union (EAEU) countries), to Russia or Belarus, or (ii) resold to any third party business partner that does not take a prior commitment not to export such Goods and Services to Russia or Belarus.
- 18.3 Upon request by Siemens, Customer shall promptly provide Siemens with all information pertaining to the particular End Customer, the particular destination and the particular intended use of Goods and Services, as well as any export control restrictions existing.
- 18.4 Customer shall indemnify and hold harmless Siemens from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with (re-)export control, sanctions or embargo regulations by Customer and/or Customer's third party business partner re-exporting Goods and Services in violation of embargoes or sanctions referred to in 18.2 above, and Customer shall compensate Siemens for all losses and expenses resulting thereof.
- 19. Miscellaneous**
- 19.1 Nothing in this Contract shall be deemed to create an employment relationship between Siemens and the Customer or any of their personnel or subcontractors.
- 19.2 The Customer is not entitled to issue instructions to Siemens' employees. Siemens is free to select and allocate the personnel deployed for the performance of the Services. Siemens alone shall pay for all compensation and social benefits of its employees.
- 19.3 Siemens shall not be obligated to fulfill this Contract if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.
- 19.4 If any provision of this Contract is prohibited or rendered invalid or unenforceable, this shall not affect the validity or enforceability of any other provision. The parties shall use their reasonable efforts to substitute such provision by a legal, valid or enforceable one with the same or a similar result.
- 19.5 Any amendments, changes or additions to this Contract must be made in writing in the form of a written agreement signed by both parties.
- 19.6 No delay or omission by either party in exercising any right, power or remedy provided by law or under this Contract shall affect, impair or operate as a waiver of such right, power or remedy.
- 19.7 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into this Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Contract.
- 19.8 This Contract is drawn up in the English language. If this Contract is translated into another language, the English language text shall in any event prevail.
- 19.9 In order to protect plants, systems, machines and networks against cyber threats, it is necessary to implement – and continuously maintain – a holistic, state-of-the-art security concept. Siemens' portfolio only forms one element of such a concept. You are responsible for preventing unauthorized access to your plants, systems, machines and networks which should only be connected to an enterprise network or the internet if and to the extent such a connection is necessary and only when appropriate security measures (e.g. firewalls and/or network segmentation) are in place. Additionally, Siemens' guidance on appropriate security measures should be taken into account. For additional information, please contact your Siemens sales representative or visit <https://www.siemens.com/global/en/home/company/topic-areas/future-of-manufacturing/industrial-security.html> Siemens' portfolio undergoes continuous development to make it more secure. Siemens strongly recommends that updates are applied as soon as they are available and that the latest versions are used. Use of versions that are no longer supported, and failure to apply the latest updates may increase your exposure to cyber threats. Siemens strongly recommends to comply with security advisories on the latest security threats, patches and other related measures, published, among others, under <http://www.siemens.com/cert/en/cert-security-advisories.htm>.
- 19.10 As a result of significant disruptions in the supply chain, particularly with respect to electronic components as well as Covid-19 pandemic, that currently impacts the global economy, temporary delays in delivery, labor or services from Siemens and its sub-suppliers or subcontractors may occur. Among other factors, Siemens' delivery is subject to the correct and punctual supply from sub-suppliers or subcontractors, and Siemens reserves the right to make partial deliveries or modify its labor or services. Furthermore, the delivery or service or completion date may be subject to change for the reasons abovementioned.



TECOSA

**Terms & Conditions for Sale Telecomunicación, Electrónica y
Conmutación S.A.**