

## Terms for assembly works – Assembly conditions of Siemens AG Austria, Smart Infrastructure RSS (May 2019 edition)

### 1. Applicability

These conditions (hereinafter referred to as “assembly conditions”) are applicable to the execution of all services (assembly, commissioning, start-up, project planning, software programming, mechanical or electronic repair, maintenance) (hereinafter referred to as “assembly or service”) by Siemens AG Austria, Smart Infrastructure RSS (hereinafter referred to as the “Contractor”).

The latest version of the general terms and conditions of delivery issued by the Austrian Electrical and Electronics Industry Association shall apply mutatis mutandis and is considered secondary to these assembly conditions (“General Terms of Delivery”).

(<https://asc.siemens.at/legal>, drop-down menu “Terms and Conditions”).

However, if the subject of the contract with the Client concerns the licensing or provision of services in relation to software (such as parameterisation), the conditions will apply in the following order:

- 1) the assembly conditions,
- 2) the General Software Terms and Conditions as amended and issued by the Austrian Electrical and Electronics Industry Association (<https://asc.siemens.at/legal>, drop-down menu “Terms and Conditions”).
- 3) the General Terms of Delivery.

Deviations from these conditions shall only be valid if they are recognised in writing by the Contractor.

### 2. Involvement of the Client

Construction progress must be sufficient at the beginning of assembly for the assembly work to be continued unhindered. In the case of above-ground structures, this work shall mainly involve plastering the walls and ceilings as well as the fitting of doors and windows; for power plants, it shall mainly involve laying the foundations, which are to be handed over to the Contractor completely dry and free of dust; at low-voltage facilities, all professional work shall be completed, especially in the rooms envisaged for assembly work.

The rooms and sanitary facilities required for assembly staff in accordance with occupational safety regulations must be made available at no extra cost at the beginning of the assembly process.

### 3. Prices

Unless agreed otherwise, the services shall be invoiced based on time and cost (“overheads”). It is also possible to invoice these services at a flat rate in accordance with an express written agreement. Unless expressly agreed otherwise, the services shall be provided during the Contractor’s normal business hours.

#### 3.1 Services at flat rates

The flat rate covers the services that the Contractor has agreed in writing to provide. It requires an unhindered assembly procedure and the timely completion of all necessary preliminary work by the Client. The Client shall bear the costs for additional expenditure incurred by the Contractor due to circumstances for which the Contractor is not responsible, such as subsequent changes to the content or scope of services, waiting times, etc.

#### 3.2 Service overheads

##### A) Staff costs

The Client shall provide the Contractor’s staff with proof of the time spent on the assembly work by means of working time confirmations, work reports or similar proof (“time records”).

Any idle time of the Contractor’s staff for which the Contractor is not responsible will be considered as an assembly period. If the Client does not confirm the time records without a valid reason, the time records of the Contractor shall be used as the basis for invoicing. The assembly work performed shall be invoiced based on the charge rates applicable at the time the service is performed and which are available at <https://asc.siemens.at/legal>, drop-down menu “Assembly Hourly Rates”. The smallest billing unit is 30 minutes.

##### On-site, Off-site, remote and overseas assembly

The charge rates for on-site assembly shall apply to services that the assembly staff from an office of the Contractor performs within the administrative region of the city or district in which the headquarters of the assigned office are located. Assembly outside this administrative region is referred to as off-site assembly. Overseas assembly covers work done by assembly staff outside Austria.

Charges shall be levied for allowances (such as expense allowances, overnight stay costs, etc.) that assembly staff are entitled to under the collective agreement for every Saturday, Sunday or statutory public holiday if it falls within the period of assembly work, regardless of whether the services are provided on this day or not.

The remote provision of services (section 4, below) shall be invoiced based on the charge rate applicable for on-site assembly.

### Overtime, night hours, Sunday and public holiday hours, compensatory time off

Overtime (i.e. working hours that exceed the normal daily working hours or the work-free hours defined according to the collective agreement for employees in the electrical industry) shall be invoiced with the overtime surcharge.

The services that are performed during night hours (during the period from 7pm to 6am) shall be invoiced with the night surcharge.

The services that are performed on Sundays, statutory public holidays or on 24 December shall be invoiced with the Sunday and public holiday surcharge.

If overtime or services at night / on Sundays / on statutory public holidays are invoiced as part of a flat rate order or for services that are invoiced based on standard rates, the overtime / night hours / Sundays / public holiday hours worked shall be invoiced separately with the amount that exceeds the standard working time otherwise applicable.

Compensatory time off must, according to the provisions of the Arbeitsruhegesetz (Austrian Rest Periods Act), be compensated in accordance with the provisions of the collective agreement applicable at the time the service is performed, regardless of whether it is a flat rate order or an order based on standard prices.

### Work under difficult conditions

A shift for work underground (tunnel, caverns) is an eight-hour standard working day. A surcharge of 10% on the applicable hourly rates shall be charged for work underground (tunnel, caverns) or at dangerous building sites (e.g. on building roofs, scaffolding, lifting platforms, etc.) and for dirty work, welding, work with chemicals and night shift work, work at heights over 1000 metres above sea level or work under very difficult conditions (e.g. areas subject to heavy traffic).

### Accommodation costs and travel time

Unless expressly agreed otherwise, the accommodation and travel time of the Contractor’s staff are not included in the prices and shall be compensated in the amount actually incurred.

The travel time is the time for the journey from the office or from the accommodation of the assembly staff used temporarily for the assembly work to the assembly site and from the assembly site back to the office or the temporary accommodation. The Contractor shall charge for the travel time of each employee at the standard applicable hours plus the mileage allowance, i.e. the mileage allowance due under fiscal law for each kilometre travelled at the time of travel. The applicable surcharge shall also be charged in addition to standard hours for travel times outside normal working hours. If only the compensation for using public transport is agreed upon in the contract, the travel times required for travel by public transport shall also be charged in addition to this compensation.

The accommodation and travel costs shall also be charged if the assembly work is agreed upon as a lump sum or in the form of standard prices and charging these costs has not been expressly ruled out in the contract.

### B) Spare parts

Spare parts that are installed by the Contractor, and it was not known that they needed to be installed at the time the contract was concluded, shall be invoiced separately as used at the material prices valid at the time of installation.

### 3.3 Duties, taxes, legislative change

The prices are exclusive of value added tax and, unless agreed otherwise, exclusive of other taxes, duties and fees. The prices are based on the charge rates, collective agreement rates, material prices, laws, standards (e.g. Austrian standard, EN standard, ISO) and other provisions valid on the date of tender. Any subsequent changes that result in additional costs, delays or service adjustments must be paid for by the Client and shall entitle the Contractor to amend the schedule.

### 3.4 Costs for authorities, test laboratories

Costs of authorities, test laboratories or government-certified bodies in relation to services, especially for official approvals or inspections of services, official commissioning, certifications, etc. must be paid for directly by the Client.

### 4. Remote provision of services

The remote provision of services (including remote maintenance) shall be carried out by using one or more remote applications that are (sometimes) operated locally on the Client’s hardware and/or hosted remotely on a server and/or are available at a web or IP address provided by the Contractor. Aside from this service, the Contractor shall also provide the material (section 10)

(this service and material are hereinafter jointly referred to as "**web-based services**").

Group companies assigned by the Contractor and other subcontractors shall also be entitled to perform the services agreed upon in the contract remotely for the purpose of fulfilling the contract.

The Client shall authorise the remote performance of these services through a telecommunications connection port that it provides at its own cost. The Client shall create and maintain the technical conditions required for this connection (e.g. establishing a broadband connection) at its own cost. The Client shall provide all other technical equipment required for rendering the remote service.

## 5. Acceptance of the service

5.1 The Contractor must inform the Client (e.g. by submitting the work report or a working time confirmation) once the services are complete. The Client must then immediately check the services and subsequently accept them. The Client shall only be entitled to refuse the acceptance if there is a major discrepancy from the service owed (i.e. due to a service discrepancy that has a major impact on the characteristic function or operational safety of the plant at which the service was provided).

5.2 If there is a delay in the acceptance of the services that is not the fault of the Contractor, the acceptance shall be deemed to be given after the expiry of 7 days counting from the time notification is provided that the service is complete (e.g. following the submission of the work report or working time confirmation). The commercial use of the Contractor's service by the Client is considered as acceptance.

5.3 The transfer of risk to the Client relating to the (partial) service shall occur when the Contractor starts to provide the (partial) service.

## 6. Completion deadline

6.1 A deadline stipulated for the completion shall only be binding if it is expressly agreed upon as binding in writing. Otherwise, the indicated deadlines are only valid as organisational dates to be used as a guide.

6.2 If a deadline for the completion of work is agreed upon between the Client and the Contractor, this deadline shall be suitably extended in the event of force majeure or idle time for which the Contractor is not responsible. A case of force majeure is deemed to have occurred if unforeseeable events or circumstances beyond the parties' control occur, such as terrorism, armed conflict, interventions and prohibitions by the authorities, transport and customs delay, damage caused during transport, a lack of energy and raw materials, labour conflicts as well as the loss of an important supplier which is difficult to replace. The aforementioned circumstances will also entitle to an extension of a deadline if they occur at suppliers.

6.3 If a case of force majeure lasts longer than three months, each party shall be entitled to terminate the contract in writing without the Client being able to raise any claims (in particular compensation for damage) for this reason.

6.4 Expenditure due to a delay in construction, interruption in construction, particularly, for example, due to bad weather, newly arranged temporary storage, relocations of working parties for reasons that the Contractor is not responsible for as well as costs for measures taken as a result of force majeure or to accelerate the work which require the use of tools and the help of staff beyond the normal level must be paid for entirely by the Client regardless of whether this involves a flat rate order or an order based on standard prices.

## 7. Payment

7.1 The service provided shall be paid for after being accepted. For services lasting longer than one month, 1/3 of the price can be paid upon confirmation of the order, 1/3 of the price at the end of the first month and the remainder of the price upon accepting the service provided.

Unless agreed otherwise, the recurring services must be paid for in advance each month on a pro-rata basis by means of a partial invoice.

7.2 Unless agreed otherwise, the invoice amounts must be paid into the account shown on the invoice immediately (no later than 14 days after the invoice is issued) and without any deductions. All taxes, fees and interest relating to this must be paid by the Client.

7.3 The Client shall not be entitled to withhold or offset payments due to claims brought against the Contractor.

7.4 A payment is deemed to have been made on the day on which the Contractor has access to it. If the agreed payment deadlines are not met, overdraft interest verified by the bank of at least 10% p.a. shall be calculated as default interest regardless of any other rights of the Contractor.

## 8. Ancillary (additional) services

If the Contractor's assembly staff performs additional services (e.g. instruction, coordination, issuing of instructions, regular local construction management or occasional monitoring of the plant, training, participation in meetings,

transportation) while providing the service or must provide the additional services after the assembly work has been completed (for example, operating the facilities on a temporary basis), the Client must pay for these services in accordance with these assembly conditions even if the original services were settled at a flat rate or based on agreed standard prices.

Unless expressly agreed upon in the contract, all skilled handwork (e.g. earthworks, bricklaying, stonemasonry, woodworks, ironworks, stucco works, upholstery, painting works, etc.), the provision of ancillary materials (wedges, supports, putty, sulphur, lead, cement, fat, etc.), drain covers, guards and all operating materials required for commissioning, acceptance and testing, cleaning work including the removal of any dirt or rework such as the tightening of terminals or cables or stamping on the excavated soil as is usually required after completing the construction work is excluded from the Contractor's scope of work. The costs for crop and plant damage that could not be avoided during assembly work (esp. to trees, flowers), the building or improvement of access routes, the removal and rebuilding of fences, rails, etc. shall be borne by the Client. The Client shall provide the Contractor's assembly staff with a lockable room on the assembly site for storing tools and materials that comes with electricity, water and heating free of charge. The Client shall be liable for the loss of tools and materials due to a break-in or theft at the premises provided by the Client.

The costs for standard tools not including special equipment are included in the billing rates. If special equipment (such as pumps, especially motor-driven pumps, compressors, aerial platforms, cherry pickers, lifting devices, drive units, winches, cable winches, emergency brakes, lifts, cableways, pulleys, hoists, measuring equipment) is required to perform the services, the use of this equipment – unless expressly otherwise agreed upon – shall be invoiced at cost of the amount actually incurred plus a 15% administration surcharge on the total costs. The same shall apply if the provision of storage barracks or builders' huts and their facilities is required in order to provide the service and they are not provided by the Client free of charge.

The one-time transportation of equipment across the building site is part of the general workload of the Contractor. However, the Client is responsible for entering into negotiations with landowners to obtain approval for using the land.

## 9. Contract period and termination of contracts

9.1 This section 9 applies to contracts that have regularly recurring services as their object. They are referred to as the "**contract**" in accordance with this section 9.

9.2 Unless agreed otherwise, the contract shall initially be concluded for a period of 6 months. It shall be extended by another 6 months if it is not terminated in writing at the latest one month before it expires.

9.3 Each party shall be entitled to terminate the contract if the contract violation that one party is responsible for cannot be remedied or solved within 30 days of receiving the request.

9.4 If insolvency proceedings are initiated in relation to the assets of a contractual party or a request to initiate insolvency proceedings is rejected due to a lack of sufficient assets, the other contractual party shall be entitled to terminate the contract without setting a grace period.

## 10. Usage rights

10.1 In the case of software provided to the Client (including upgrades, updates), other intellectual property made available for use and web-based services, the Contractor grants the Client the non-exclusive, non-transferable and non-sublicensable right to use the standard software, intellectual property and web-based services provided to it in the object code along with (i) standard software and intellectual property at the agreed installation location in accordance with the contractual specification and (ii) web-based services solely for its own internal business purposes. All other rights to the standard software, intellectual property and web-based services are reserved for the Contractor and its licensors. The Client shall not be entitled to reproduce standard software, intellectual property or web-based services, change them (especially reverse engineering, disassembling), make them available to third parties, connect them with other services, sell them or resell them, rent them, lease them, assign them or transfer any rights in whole or in part or, in the case of standard software, use it on hardware other than the contractual hardware without prejudice to the provisions of Section 40d of copyright law without the prior written consent of the licensors. The Client is prohibited from editing the information, documents, software, products and services or other material (text, graphics, logos, button symbols, images, audio clips, data, photos, videos, fonts and recordings) (referred hereinafter jointly as "**material**") provided by the Contractor in this or any other context or from integrating them into its own services.

Any use of standard software or intellectual property on hardware other than that defined in the contract and at numerous workplaces or the use of web-based services for the purposes other than the Client's own internal business purpose is subject to a separate written agreement against payment. The licence is subject to the condition that the Contractor always adheres to all provisions of these terms and conditions.

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If the services of the Contractor contain open-source components or the software of third parties, the applicable open-source licence conditions or the licence conditions of this third party shall take precedence over these conditions.

- 10.2 In connection with the use of web-based services, the Contractor may receive or record data from the Client or information from third parties (such as system-specific data, device properties, performance parameters, property names, other purely technical data or parameters and other content) (hereinafter referred to under this point as “content”). The Client shall grant the Contractor the non-exclusive, transferable and sub-licensable, worldwide, royalty-free, perpetual and irrevocable right to use the content for the provision of web-based services to the Client and for the production of derivative works or aggregated data, each of which may be merged with the content, data of other customers and data from other sources (e.g. comparative data sets, statistical analyses, reports and related services (referred to jointly as “Siemens data”). The Contractor may use the Siemens data without restriction. If the Client stores data manually using web-based services, the Client shall be responsible for all consequences relating to this. If data are subject to special statutory regulations (e.g. regulatory requirements), the Client must inform the Contractor of this in writing in advance so that the Contractor can verify this. Should the intended storage be possible, the Contractor shall reach an agreement on the details of special data handling in writing. The Client guarantees that the necessary consent has been obtained from third parties so that the Contractor can use the content to the extent described above. Unless expressly agreed otherwise in writing, the Contractor shall not be responsible or liable for deleting, correcting, destroying, damaging, losing or not storing content.

## 11. Privacy policy

The Contractor shall process the personal data in accordance with the applicable legal regulations for protecting personal data. The Client grants the approval to the Contractor to process its personal data pursuant to the Consent to Process Personal Data (<https://asc.siemens.at/legal> drop-down menu “Privacy Policy” “The Consent to Process Personal Data”). The Information to Personal Data (<https://asc.siemens.at/legal> drop-down menu “Privacy Policy” “Information to Personal Data”) explains how the Contractor handles personal data and which options the parties involved have in order to complain about this data processing.

## 12. Liability

The Contractor shall be liable for damage provided that it or its vicarious agents can be shown to have caused this by means of intent or gross negligence; the liability shall be set at 25% of the net order value for each instance of damage and the total liability in the case of gross negligence is limited to the net order value.

In the case of regularly recurring assembly work, the total liability shall be limited to the amount of an annual fee for the agreed services or to 50,000 euros in the absence of an agreement on the annual fee. In such cases, the liability of the Contractor shall be limited to 25% of the annual fee or 12,500 euros for each instance of damage in the absence of an agreed annual fee.

The liability for slight negligence, compensation for consequential damage, pure financial losses, indirect damage, production losses, financing costs, costs for an alternative form of electricity, loss of electricity, data or information, lost profit, losses resulting from claims by third parties against the Client, loss of savings and interest rate losses is excluded.

If contract penalties are agreed upon, additional claims arising from the this title are excluded.

Should the Client use the services of the Contractor’s staff to perform a service, this shall be solely at the risk of the Client and with the exclusion of any liability for the Contractor. Should the Client use the services of the Contractor’s staff beyond what is stated in the agreement, the Client must obtain written permission from the Contractor that this is done based on a previously defined fee or in its absence to the charge rates applicable at the time the service is provided (section 3.2 A, above).

The Client shall include the Contractor, any of its subcontractors and consortium partners as well as the operational risks relating to the services to be provided by the Contractor in its existing mechanical breakdown and mechanical breakdown business interruption insurance policy or in a similar insurance policy or liability insurance policy in the absence of this insurance and have the transfer of insurance policies to the Contractor restricted. The Client must submit adequate written confirmation from its insurance company of compliance with all obligations specified in this section at the written request of the Contractor immediately, however at latest within seven working days after receiving this request.

The regulations in section 12 are deemed final for all claims of the Client against the Contractor irrespective of their legal grounds or title, and are also valid for all employees, subcontractors and suppliers of the Contractor.

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