

TERMS AND CONDITIONS OF PURCHASE FOR CONSTRUCTION WORKS
OF SIEMENS-GROUP AUSTRIA
Issued January 2018

1 Scope

These Terms and Conditions of Purchase for Construction Works apply to all purchase orders of SIEMENS Aktiengesellschaft Österreich and the companies affiliated to it ("SIEMENS") which, at least partly, cover Construction Works.

2 Award of Contract

These Terms and Conditions of Purchase for Construction Works shall become part of the contract as soon as a purchase order is accepted.

3 Offer Stage

- 3.1 The drawings which are enclosed to the specifications or which may be inspected at the construction supervisor's office shall only form the basis for the tender. If the Contractor ("CN") believes that, in order to achieve more clarity, amendments or additions to the specifications are necessary, it shall immediately inform SIEMENS about it in a separate letter. The CN shall neither modify nor amend the specifications.
- 3.2 If the CN makes more favourable proposals in building, technical or economic terms regarding the implementation of individual items of the specifications, it shall include them as alternatives in the tender.
- 3.3 The CN may enquire about the location of the building site, the local conditions, the possibilities to access or leave the building site etc. The CN may not rely on the fact later on that it has not been aware of them.
- 3.4 The tender shall include an equipment list stating the connected wattage.
- 3.5 The CN shall include a list of its subcontractors in the tender. SIEMENS shall be entitled to request the elimination of individual subcontractors from the list.
- 3.6 The CN shall be bound by its tender for a period of 90 days after the date of submission.

4 Prices and Scope of Works

- 4.1 The agreed prices are fixed and shall be valid for the agreed performance period.
- 4.2 If the main seat of the CN and the place of installation/erection are within the EU, DDP (place of destination) Incoterms® 2010 shall apply, that is, CN bears all costs and risks involved in bringing the goods to the place of destination and has an obligation to clear the goods not only for export but also for import, to pay any duty for both export and import and to carry out all customs and formalities. If the main seat of the CN and/or the place of installation/erection is outside the EU, DAT (place of destination) Incoterms® 2010 shall apply. The price includes erection, costs of labour, non-wage labour costs, cleaning of the construction site, disposal of wastes, accommodation and adduction of all necessary documents, such as working drawings, journals, documentation of direct labour, shipping notes, time reports, inspection sheets, bill of quantities, final acceptance (by the authority), all K-Sheets (K-Blätter) in accordance with ÖNORM, bill of materials, order forms, other protocols, and so on. The documentation has to be done according to SIEMENS' requirements. Costs for delivery and packaging, as well as the costs for the transport insurance, which has to include the unload process, are to be borne by the CN.
- 4.3 Unit prices shall remain valid if Construction Works performed in full or in part at a unit price deviates from the work originally intended in terms of scale, unless such work is due to instructions by SIEMENS.
- 4.4 If overtime is ordered in order to comply with deadlines or for other urgent reasons, such work shall be deemed included in the overall lump sum fixed price. Ancillary work shall be deemed covered by the agreed price. Ancillary works means works explicitly agreed to be performed in addition to the agreed main works or additional works to be performed pursuant to fair or commercial practice. Unless separately stated in the specifications, ancillary works to be performed by the CN shall include, but not be limited to: all statistical or other calculations, general plans, detailed plans, site foreman's plans and settlement schedules required for authorities, for the site management and for the settlement of accounts. Such work shall be covered by the contract price. Any fees arising in connection with such calculations and drawings shall be borne by the CN. Construction drawings shall be submitted to SIEMENS for approval in three copies prior to the start of the works. Such approval shall not release the CN from its liability. The standards of the Austrian Standards Institute shall apply to calculations and drawings.
- 4.5 The CN guarantees the completeness of its works by performing all services necessary for the correct and defect-free performance of its tasks without being entitled to additional remuneration or to an extension of the performance period, even if this has not been explicitly agreed upon in the contract.
- 4.6 The CN is familiar with the local conditions (in particular the subsoil, vehicle access and storage facilities) and the scope of supplies and services to be performed by it. The CN has inspected the description of supplies and services to be performed by it and examined the terms and conditions and documents handed over to it and has found that they are conclusive. If the CN has objections against instructions and/or parts provided (fabrics, materials, items) or against work performed by other contractors, it shall immediately inform SIEMENS in writing about its concerns giving reasons for its objections. In other respects, ÖNORM B 2110 (as issued on 01st Mar. 2011), point 6.2.4. "Duties to Inspect and Warn", applies accordingly.
- 4.7 If the works to be performed are connected with already existing components or facilities, the CN shall perform or verify the required measurements.
- 4.8 If services are ordered which the CN thinks go beyond the scope of its contract or which the CN thinks are not covered by it, and if the CN performs them without a written amendment to the contract, such performance shall be construed as constituting a waiver of its remuneration.
- 4.9 Works of whatever nature performed by the CN without contract under whatever circumstances, except in case of imminent danger, will not be remunerated. Such works shall be removed upon the Customer's request and at the CN's cost within the

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time limits specified by the Customer. The CN shall compensate SIEMENS for any damage incurred in this connection.

4.10 Any work performed due to bad weather conditions (e.g. rain, frost, snowfall) shall not entail additional costs.

4.11 The scope of supplies and works to be performed by the CN shall also include the following points:

- The CN bears the overall responsibility for its trade;
- for the scope of supplies and works to be performed by the CN, staff including staff for planning, coordination, construction and supervisory tasks must be available in sufficient number for the required jobs at and at the required dates without additional costs to SIEMENS;
- The CN guarantees and ensures that its construction manager does not work on another project during implementation of the contract without the written consent of SIEMENS;
- The CN is appointed project manager for the purpose of the *Bauarbeitenkoordinationsgesetz* (BauKG - law which governs work at construction sites) and all owner's duties laid down in the BauKG, in particular those laid down in § 3, § 4 (1), § 6, § 7 and § 8 BauKG, are herewith assigned to and expressly accepted by it. The CN shall, in particular, appoint a planning and a construction site coordinator and draw up a so-called "basic document for later work" on the structure.

5 Implementation of contract

- 5.1 Upon award of contract and if requested by SIEMENS, the CN shall determine and notify to SIEMENS the exact quantity of materials. SIEMENS reserves the right to provide materials, where necessary.
- 5.2 The CN shall perform its services under its own responsibility, in accordance with the contract and the accepted technical rules as well as the applicable legal and administrative provisions. In addition, the CN shall observe the provisions of the manufacturers governing the use of their products.
- 5.3 The CN shall prepare work drawings, the site installation plan, the list of equipment, the construction schedule and other construction documents and shall submit them to SIEMENS for inspection well ahead of the beginning of construction so that SIEMENS can review them within a period of at least 12 working days. Any costs incurred by the CN in this connection are covered by the agreed remuneration.
- 5.4 The required official permits for the use of roads, pavements and property not belonging to the owner of the building site, shall be obtained by the CN at the CN's cost and any conditions imposed in this connection shall be fulfilled by the CN at no cost to SIEMENS.
- 5.5 Power and water connections shall be supplied by the CN in connection with mobilisation of the site, unless otherwise provided in the specifications. Electricity and water charges shall be paid by the CN. The taps installed by the CN shall be maintained until completion of all works and the right to use them shall be granted to all other firms working on the site. The CN shall ensure that no unauthorised abstraction of power is possible. Upon completion of the project, the power and water connections for the building site shall be removed and the original condition restored upon the request of SIEMENS.
- 5.6 The CN shall keep daily construction records and submit them for information to SIEMENS during normal business hours. Such information shall not constitute acceptance of any part of its contents by SIEMENS.
- 5.7 During performance of works under the contract, the CN shall perform work on hourly rates in addition to its scope of services upon request of the construction supervisor of SIEMENS.
- 5.8 Works on hourly rates and overtime for such works may only be performed subject to the prior approval of the construction supervisor of SIEMENS. Such works will only be remunerated on the basis of time sheets to be approved by the construction supervisor of SIEMENS, which list the names and jobs of the staff employed. These time sheets have to be presented not later than the next day.
- 5.9 For works performed on hourly rates during contract works, no pro rata foremen's or other supervisory hours may be invoiced. However, the CN shall not be released from its supervisory duties.
- 5.10 After completion of the contract works, the remuneration of foremen and other supervisory bodies working on hourly rates shall be agreed in advance with SIEMENS.
- 5.11 At the end of each month, the CN shall hand over to SIEMENS a list of subcontractors scheduled to work on the construction site the following month as well as their work schedules.

6 Insurance

- 6.1 The CN shall maintain liability insurance for the term of the contract and prove its validity to the Customer immediately after securing the contract and at any time later, upon the Customer's request. The sums insured under these policies shall be € 1,500,000.00 / three times the aggregate.
- 6.2 SIEMENS may take out builder's risk insurance. In such case, the pro rata premium will be deducted from the CN's final invoice.
- 6.3 If SIEMENS does not take out builder's risk insurance, the CN shall take out a builder's risk insurance policy and prove its validity.

7 Payment / Collateral

7.1 Final Invoice:

In the case of projects for which payment in instalments has been agreed, the final invoice will be paid within an inspection period of 90 days after receipt of all relevant settlement documents, quantity surveys, time sheets for scheduled hours etc.

7.2 Security Deposit:

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90% of the inspected and accepted invoice amount will be paid in the case of invoices for payments on account and partial invoices. The remaining 10 % will be withheld as security deposit which cannot be redeemed by cashless collateral. Unless used by SIEMENS, the security deposit shall be settled with the final invoice and released. The security deposit does not attract interest and serves as security for all claims SIEMENS may have against the CN

7.3 Retained Payment:

SIEMENS is entitled to retain payment in an amount of 5% (five percent) of the total contract value from the final invoice amount for the period of warranty. This retained payment is intended to secure any claims for damages or other claims of SIEMENS against the CN arising from or in connection with this contract. The retained payment may be substituted by an abstract, irrevocable bank guarantee issued at no cost to SIEMENS by an Austrian large bank accepted by SIEMENS with a maturity date falling six months after expiry of the warranty period and payable upon first demand. The currency in which the bank guarantee is issued shall be the same as that in which the contract value is denominated. If the value of a contract changes, the guaranteed values shall be adjusted accordingly. All costs and fees shall be covered by the guaranteed value.

7.4 SIEMENS is only in default of payment if it fails to pay any amounts due, despite a request for payment from the CN.

7.5 The CN may assign claims only with the prior written consent of SIEMENS. The CN may not retain works due under the contract. This shall not apply if the counterclaims on which the right of retention is based have been left undisputed or if they have been legally established.

8 Handing-over / Taking-over

8.1 Partial works shall be handed over at the interim dates (milestones) determined by SIEMENS, while formal transfer (acceptance) shall take place on the final date. The CN shall submit all documents and prove that the partial works were performed in accordance with all contractually agreed or normally expected characteristics and pursuant to the applicable technical and scientific rules and that they are free of defects. The CN shall notify SIEMENS of completion 14 days before the agreed interim date and allow SIEMENS to perform inspections. Any identified defects shall be remedied immediately upon request of SIEMENS and any costs resulting therefrom shall be borne by the CN. Upon completion of the last partial works, the CN shall notify SIEMENS of the formal handing-over of the entire project 14 days before the contractually agreed final date. In this connection, the CN shall hand over all required documents, all correspondence, etc. and prove that the entire project has been carried out pursuant to the applicable technical rules and that it is free of defects. If defects become apparent during the taking-over procedure, the project as a whole will not be accepted by SIEMENS. In all cases, the CN shall file another application for acceptance of the project as soon as all objections raised by SIEMENS have been satisfied. If objections are not satisfied within the specified time-limit or in the agreed way, SIEMENS may, without prior notice, entrust a third party with the removal of defects at the cost and risk of the CN.

8.2 The parties shall jointly draw up and sign the Acceptance Certificate and any apparent defects shall be stated therein. In the case of negligible defects, i.e. defects constituting a minor deviation from the contractually agreed performance and not impairing the intended use of the facilities, a period of 1 week shall be granted to rectify the defect. In this case, the work supplied shall be deemed accepted as soon as written proof of the timely rectification of defects has been provided.

8.3 If it becomes apparent before the taking-over of the project, that works performed are defective, or if other conditions laid down in the contract, in particular deadlines, are not complied with by the CN for any reason whatsoever, SIEMENS may terminate the contract with immediate effect, in whole or in part, by giving written notice and award a contract for the respective works not yet performed to third parties. Any additional costs arising in this connection shall be borne by the CN, without prejudice to claims for payment of a penalty (as e.g. pursuant to point 4.2 of the General Terms and Conditions of Purchase of the SIEMENS group in Austria). In the case of termination of the contract, SIEMENS may use the facilities, scaffolds, equipment, machines etc. for continuing the work for equitable compensation. The opening of bankruptcy or composition proceedings over the CN shall entitle SIEMENS to terminate the contract with immediate effect and to claim damages for non-performance.

8.4 As soon as the project has been taken over, the works performed by the CN shall be deemed accepted, the risk shall transfer and the warranty period start.

8.5 The commissioning of individual parts of the facility or of the facility as a whole before the time referred to above shall not constitute acceptance for the purposes of point 8.4.

9 Warranty and Damages

9.1 The CN warrants that it will comply with all legal, administrative or other provisions when performing the contract. It shall be liable for any consequences resulting from a violation thereof. The CN furthermore warrants that its supplies and services have the contractually agreed features, that they comply with the accepted technical rules and that they are free of defects which would make them worthless or reduce their value or affect their suitability for the customary or agreed use.

9.2 The warranty period is five years and starts on the date of acceptance; in the case of hidden defects the warranty period starts upon discovery. All defects established upon acceptance and all defects arising during the warranty period shall be immediately repaired by the CN at the CN's cost upon request. If the CN is not prepared to perform such repairs, SIEMENS shall be entitled without further notice to have the defect repaired by third parties at the cost and risk of the CN. The reasonableness of the period is to be appraised in the light of the impact of the defect on other specialist works and shall therefore be determined by SIEMENS in the individual case.

9.3 The CN and its staff as well as other agents (sub-contractors) shall be liable, within the scope of the applicable legal provisions and without prejudice to any penalties payable, for all damages caused to SIEMENS or third parties. The CN shall indemnify and hold SIEMENS harmless against any third-party claims.

9.4 The CN shall be liable for compliance with all provisions concerning its employees, sub-contractors and suppliers and their employers (such as the *Ausländerbeschäftigungsgesetz* - Employment of Foreign Nationals Act). The CN warrants that all

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employees working for it have the required permits and approvals and that they can be immediately presented in the case of site inspections. The CN shall fully indemnify and hold SIEMENS harmless against any claims arising from the violation of these provisions.

10 Parts of the contract

10.1 The following documents and provisions shall govern the contractual relationship between the CN and SIEMENS in accordance with the hierarchy established hereinafter:

- a) the purchase order form
- b) the specifications with the related drawings
- c) these "Terms and Conditions for Construction Works of the SIEMENS Group in Austria"
- d) the "General Terms and Conditions of Purchase of the SIEMENS Group in Austria", as amended
- e) the "technical requirements for Construction Works" established by the Austrian Standards Institute and the engineering standards committees as applicable.
- f) the CN's tender

11 Safety, health and environmental protection

The CN shall ensure that the safety, health and environmental regulations applicable at the respective premises or at the respective construction site of SIEMENS are complied with by the CN and its agents. The CN shall release SIEMENS from all claims arising from non-compliance with these regulations. Storage of construction materials shall be at the risk of the CN. The installation of site huts and the selection of their location require the approval of SIEMENS. The construction site and/or the installation site shall always be maintained in proper condition and cleaned up after completion of works. The CN shall be responsible for adequately isolating and securing the construction site.

12 Consideration of Siemens products

The CN shall perform its works without specific regard to products of SIEMENS. By way of exception, the CN shall use, as far as possible, the products of SIEMENS and of its affiliates when working on buildings used by SIEMENS.

13 Use of tools, moulds, samples and confidentiality

Any tools, moulds, samples, models, profiles, drawings, standard specification sheets, printing templates and calibres provided by the Customer, as well as any objects derived therefrom may not be passed on to third parties nor used for other than the agreed purposes without the written approval of the Customer. They shall be safeguarded against unauthorised access or use. Without prejudice to further rights, the Customer may request their handing over if the CN violates these obligations.

14 Occupational Health and Safety

14.1 The Seller is obliged to comply with all legal requirements regarding the health and safety of its employees. It must ensure that the health and safety of its personnel as well as the personnel from his direct or indirect subcontractors employed to perform the deliveries and services and all other persons who are entitled to stay in the work area, is protected.

If the work or services are to be performed on premises of SIEMENS or on construction sites on behalf of SIEMENS, additional safeguard instructions as described in the document AS-111e "EHS instruction sheet for employees of external companies" (<http://einkauf.siemens.at>) apply.

14.2 Before the commencement of the Works, CN shall provide Siemens with a written risk assessment that a) analyzes all potential hazards for the health and safety of the Personnel arising out of the Works and b) determines measures to eliminate such hazards.

14.3 CN shall ensure that all Personnel take part in site-specific safety training and receive the appropriate personal protection equipment before starting work on the site. CN shall ensure that the Personnel make use of the personal protection equipment in the appropriate manner and that such equipment is maintained in good working order at all times.

14.4 Siemens reserves the right, at its sole discretion, to bar any Personnel from the site and/or to suspend the execution of the Works for security, health and safety reasons, at any time without any liability whatsoever.

14.5 CN shall appoint a competent person as its representative for environmental, health and safety ("CN EHS Representative") and shall ensure that the CN EHS Representative takes part in safety discussions arranged by Siemens from time to time.

14.6 CN shall regularly monitor compliance with statutory and contractual health and safety provisions by performing safety tours on the site. In due time before a safety tour, CN shall invite Siemens to participate in the tour. If the CN discovers non-compliance with health and safety provisions, it shall restore compliance without undue delay and advise Siemens of findings and of the status of the corrective actions.

14.7 Upon Siemens' request, CN shall promptly grant Siemens access to all documents related to health and safety connected with the Works.

14.8 In case of an incident leading to a) the death of any Personnel or b) a severe injury involving more than one day of incapacity of any Personnel or c) more than three workers being brought to hospital, CN shall immediately inform Siemens and shall, without undue delay, 1) execute a root cause analysis of the incident, 2) determine appropriate measures to exclude similar incidents in the future, 3) define time periods for the measures to be implemented and 4) provide Siemens with a written report containing sufficient detail on the root cause, the measures determined and the time periods defined. CN shall support any additional investigation conducted by Siemens.

14.9 In the event Siemens produces a safety and health document for the site ("EHS Plan") Siemens will provide CN with a copy of the EHS Plan. The CN shall confirm receipt thereof in writing and comply with the regulations contained therein. The same

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shall apply to updates of the EHS Plan which Siemens may produce as it deems necessary. CN shall ensure that its direct and indirect subCNs contracted to perform the Works commit themselves to the EHS Plan and its updates.

- 14.10 In addition to any other rights Siemens may have, in the event of CN's material or repeated failure to comply with the statutory or contractual health and safety provisions, including the provisions of this Article and the provisions of the EHS Plan, Siemens may terminate this Agreement without any liability whatsoever, after providing CN with a reasonable time period within which to remedy the failure.