

## Supplementary Terms and Conditions for Services („BL“)

Industry Services, Status: July 2016

### 1 Applicable Terms and Conditions

- 1.1 These Supplementary Terms and Conditions for Services („BL“) apply for orders of Services from Siemens by Customer. For Services, the General Conditions for the Supply of Products and Services of the Electrical and Electronics Industry („GL“) in its current version shall apply in addition to the BL. General terms and conditions of the Customer shall only apply if and to the extent expressly accepted by Siemens in writing.
- 1.2 For any product deliveries included in the Services the GL shall apply exclusively.
- 1.3 Unless expressly agreed otherwise, the scope of the Services are set out exclusively in the respective specification of Services for the Service Elements chosen by Customer, this BL, and the GL.
- 1.4 In case of conflict amongst this BL, the GL and the respective specification of Services, the following order of precedence shall apply:
  - (i) Specification of Services, including any definitions, conditions, duties of cooperation, exclusions of the scope of Service, and remunerations regulations
  - (ii) Supplementary Terms and Conditions for Services („BL“)
  - (iii) General Conditions for the Supply of Products and Services of the Electrical and Electronics Industry („GL“)

### 2 Subject Matter of the Contract

- 2.1 The agreed Services shall be performed for the agreed Siemens components respectively other expressly agreed components, which are integrated in the agreed machines/plants/systems or products (hereinafter: „Service Objects“). The agreed Service Objects shall be written down in a mutually agreed document by Customer and Siemens. Unless expressly agreed otherwise in writing, third party components will not be serviced.
- 2.2 Masonry, metalwork, scaffolding, caulking, painting, excavating and other non- electrotechnical work is not included in the scope of the Services of Siemens. Unless expressly agreed otherwise in writing, operating materials, consumables, spare and wearing parts shall not be included in the remuneration for the Services.

### 3 Commencement of the Contract, Term of the Contract

The Services might be performed as one time individual performances and/or as continuing obligations. As far as the Services are based on a continuing obligation, the commencement of the contract and the term of the contract comply with the respective specification of Services respectively the individual agreement between Customer and Siemens. In the event that Customer and Siemens have not expressly agreed on a provision regarding the commencement of the contract, the term of the contract begins with the receipt of the last declaration of intent, which is necessary for the conclusion of the

contract. The term of the contract shall be, in any case, a fixed term of contract. Unless expressly agreed otherwise in writing, the continuing obligation terminates automatically with expiration of this fixed term of contract.

### 4 Execution of Services

- 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 to or otherwise stated in the specification of Services.
- 4.2 Siemens reserves the right to execute a Service set out in the contract through a technically equivalent solution, provided that any such modification does not constitute a change of the agreed characteristics/specifications of the Service to the detriment of the Customer.
- 4.3 As far as the type of the Service does not require the execution at a specific location, the Services can be performed at any place, at Siemens' sole discretion.
- 4.4 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.

### 5 General Duties of Cooperation

- 5.1 Customer shall cooperate by the timely and complete performance of its duties of cooperation set out in the contract and hereinafter, so that Siemens is able to begin the Services on time and perform them without impediments or interruptions.
- 5.2 To the extent required or deemed advisable for the performance of the Services (in particular Remote Services), Customer shall perform the following general duties of cooperation in time and free of charge:
  - (i) Access to the Service Objects, respectively the herein included Siemens components. Establishment of the required operating conditions and infrastructural requirements necessary for the performance of the Services, such as including but no limited Internet access, electricity and telephone.
  - (ii) Provision of briefings and trainings, including provision of information regarding relevant hazards of the Equipment for humans and machines resulting from the provision of Services, as well as regarding the applicable safety regulations of Customer.
  - (iii) Ensuring and monitoring that the Equipment is in a safe condition so that there are at no time risks for humans or machines during the performance of the Services. Ensuring that the Service Objects are disconnected from the mains during the performance of the Services. The switching authorization for the Service Objects and the respective responsibility always remains with

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Customer. Implementation of other required operational and legal safety measures. 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) Provision of appropriate plant management personnel during the performance of the Services with the necessary experience and know-how concerning the provision of the Services, who can operate the Service Objects and plants and are able to restart the Service Objects and Equipment after troubleshooting. Furthermore, the plant management personnel of Customer must be able to make and implement any necessary decisions concerning the Services.
  - (v) Support Siemens in problem analysis to the extent necessary, e.g. providing incident reports and error messages.
  - (vi) Coordination of third parties commissioned by Customer.
  - (vii) Provision of technical resources and auxiliary equipment (e.g. ladders, scaffolding, lifting devices, special tools) with the required operating personnel as well as the necessary operating and production resources and materials and consumables.
  - (viii) Provision of up to date documents and information, e.g. documents on the Service Objects and/or the Equipment, the configuration drawings, error reports.
  - (ix) 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.
  - (x) Obtaining of any permits, approvals, consents or authorizations from any relevant authority, except to the extent that these can only be obtained by Siemens.
  - (xi) Timely coordination with Siemens of planned changes in the Service Objects (e.g. installation site, enhancements, migrations, expansions), in case such changes may influence the agreed Services. Any changes to the contract (e.g. remuneration, dates/reaction times and scope of Services) (if applicable) resulting therefrom shall be jointly agreed by both Parties. During the period between Customer's request of such changes and the Parties agreement upon such changes and any consequences on the contract, Siemens is not obliged to perform the Services. In the event the Parties fail to agree on a modification of contract within a reasonable time, Siemens is entitled to terminate the contract for good cause.
- 5.3 If a Service cannot be performed in the required manner or can only be performed upon delay on grounds for which Siemens is not responsible, particularly because Customer has not performed or timely performed its general or special duties of cooperation or Customer has culpably missed an agreed deadline, Siemens may separately charge

to Customer the additional expenses incurred, including all waiting periods, according to the price lists valid at the given time. Agreed-upon dates and deadlines shall be prolonged to a reasonable extent.

## 6 Acceptance and Transfer of Risk

- 6.1 Where a formal acceptance for Services has been agreed to in the contract, Customer shall declare acceptance within 2 weeks of completion of performance by Siemens, or of the notice of completion, whichever is earlier. The risk shall pass to the Customer upon acceptance.
- 6.2 Acceptance shall be deemed to have occurred within 2 weeks of completion of performance by Siemens or if the Services have been put into operation. In the event that a test phase is agreed, the deemed acceptance shall occur if the Services have been put into operation after the completion of an agreed test phase.
- 6.3 Customer shall provide all things necessary for the execution of an acceptance/acceptance test. Unless expressly otherwise agreed to, Customer shall bear the entire costs associated with the acceptance, with the exception of Siemens' personnel costs.
- 6.4 An acceptance shall not take place if no formal acceptance has been expressly agreed to in the contract and/or regarding such Services that are comprised of services for which a success is not owed. The risk shall pass to the Customer on performance of the relevant Service.
- 6.5 In case the performance of Service is delayed for reasons for which Customer is responsible or in case Customer is in delay of acceptance for other reasons, risk shall pass to Customer at the point in time in which it would have passed to Customer without the delay.

## 7 Delay of Service

- 7.1 If a binding Response Time has been agreed for a Service, e.g. call-back times, Customer is - in deviation of but subject to the conditions set out in Section "IV Time for Supplies; Delay, No. 3" of the GL - entitled to a compensation of 50.- EUR per full day of delayed Service. This compensation is limited to a maximum of 10% of the value of the monthly Service fee with is delayed. In all other cases the stipulations regarding compensation as set out in Section IV: "Time for Supplies; Delay, No. 3" of the GL shall apply.
- 7.2 In case Services are based on a continuing obligation, the Customer is entitled to a termination of a Service in lieu of a rescission of the contract under Section "IV. Time for Supplies; Delay, No. 4, 3rd sentence" of the GL, subject to the conditions set out for a rescission under Section "IV. Time for Supplies; Delay, No. 4, 3rd sentence" of the GL.

## 8 Qualitative Impairment of Performance, Defects liability

- 8.1 To the extent the Services are comprised of services for which a success is not owed and are not performed in conformity with the contract, only the regulations set out in this section 8 shall apply.
- 8.2 Should Services that are comprised of services for which a success is not owed, not be performed in accordance with the terms of the contract for reasons for which Siemens is responsible, Siemens shall re-perform the defective Services if and to the extent

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Customer has notified Siemens by written notice without undue delay, maximum within 2 weeks from the date of the performance of the Service. If Siemens fails to re-perform the defective Service in accordance with the terms of the contract within a reasonable period of time, Customer is entitled to terminate the Service affected by the defect by written notice with immediate effect.

8.3 Siemens obligation to re-perform defective Services under section 8.2 shall expire no later than 12 months from the date of Siemens' performance of the defective Service.

8.4 Insofar as in respect of a warranty claim any disassembly and reinstallation of a Service Object or other parts of the Equipment is necessary for the performance of Services in accordance with the terms of this contract, this disassembly and reinstallation shall be undertaken by Customer at its own cost.

8.5 Any disassembled, either defective or no longer required parts of the defective Product, shall become property of Siemens. Siemens shall be responsible for a disposal in accordance with legal and environmental regulations.

8.6 If and to the extent a Service includes supervision, Siemens is only liable to the extent any damage was caused by incorrect instructions or omissions for which Siemens is responsible. Furthermore, Siemens is only liable if and to the extent that Customer is unable to claim compensation from the third party that performed the services Siemens was supposed to supervise.

8.7 Siemens shall have no liability for claims for damages by Customer due to defects or a qualitative impairment of performance of a Service for which a success is not owed. This limitation of liability shall not apply in the event of a fraudulent concealment of a qualitative impairment of performance or a defect, injuries to persons or health or death, the intentional breach of a duty by Siemens, negligent breach of a fundamental condition of contract or if the guaranteed characteristics are not complied with. Claims for damages arising from a breach of a fundamental condition of contract shall be limited to the foreseeable damage which is intrinsic to the contract, provided that no other of the above case applies. The above provisions do not imply a change in the burden of proof to the detriment of Customer. Any other or additional claims of Customer exceeding the claims provided for in this section 8, based on a qualitative impairment of performance or a defect of the services for which a success is not owed, are excluded.

8.8 Regarding quality defects in a Service that are not comprised of services for which a success is not owed, section 8.4 and 8.6 of this BL apply accordingly. In all other respects section "VIII: Defects as to Quality" of the GL shall apply exclusively.

## 9 Directives, Laws and Standards

9.1 Performance is based on the current standards and Customer's site rules, provided they have been expressly agreed, are applicable on the effective date of the contract and are mandatory in relation to the performance of the Services by Siemens. Performance shall also be based on the current laws, and directives of the government agencies notified to Siemens if and to the extent they are applicable on the effective date

of the contract and are mandatorily applied to the performance of the Services by Siemens.

9.2 If Siemens notices that there is a change in the current laws, standards, directives and/or Customer's site rules or if new ones are added, Siemens will advise Customer of the resulting changes in regards to the performance of Services and take such changes into account upon Customer's request when executing Services. Changes generating increased or reduced costs and/or having an impact on deadlines shall be to the benefit or the liability of Customer. In case of changes resulting from mandatory legal regulations, Customer shall issue a change order for such changes without undue delay. Siemens is entitled to refuse to perform the relevant Services until a change order has been issued by Customer to ensure that the Services comply with mandatory laws, standards and directives. Delays and costs resulting from the failure to issue a change order shall be the liability of Customer.

## 10 Assignment of Contract; Deployment of Personnel; Acquisition of Assets and/or Personnel

10.1 Siemens may assign rights and obligations under the contract to a third party, provided that Siemens has a legitimate interest for the assignment. The assignment shall have no effect if Customer contradicts within 4 weeks after receipt of the respective notification by written notice providing the reasons for its legitimate interests. Siemens will inform Customer about this requirement in its notice. In the event that Customer contradicts without providing its legitimate interests, Siemens shall be entitled to terminate the contract for good cause. The assignment of claims for money of Siemens against Customer shall be unaffected thereof and shall be subject to the statutory provisions.

10.2 Siemens employees shall not be considered as to enter into any employment relationship with Customer even if they work on Customer's premises.

10.3 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.

## 11 Termination; Suspension

11.1 If the Services are based upon a continuing obligation, Customer respectively Siemens shall be entitled to terminate the contract by written notice, in the event that it cannot be reasonably expected to uphold the contract, because in consideration of all circumstances of the individual case and both parties interests, circumstances exist which are attributable to the other party which allow the expectation that the other party will permanently not be able to fulfill its obligations arising from or in connection with the contract.

11.2 In case Services are based on a continuing obligation, the Customer is entitled to a termination of a Contract in lieu of a rescission of the contract under Section "XI: Impossibility of Performance; Adaption of Contract, No. 2" of the GL subject to the conditions set out for a rescission under Section "XI: Impossibility of Performance; Adaption of Contract, No. 2" of the GL.

11.3 The right to terminate the contract for another contractually agreed cause or another good cause remains unaffected by the foregoing. In particular, Siemens may terminate the contract for good cause, if

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Customer is in arrears with the payment and does not rectify this failure in payment within 4 weeks.

- 11.4 Siemens may demand, at its sole discretion, a suspension of its contractual obligations if Customer is in arrears with a payment or part thereof. Any additional expenses for Siemens incurred as a result therefrom shall be borne by Customer.

## 12 Data Protection and Rights of Use

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

- 12.2 Customer is granted a non-exclusive, non-transferable and royalty free license to use the documents handed over by Siemens for the purpose of operation and maintenance of the Service Object. Customer is not entitled to use the documents for other purposes, in particular not in order to reproduce Products or parts thereof.

- 12.3 Customer grants Siemens and its Affiliates a worldwide, unrestricted and perpetual license to host, store, copy, modify, process, analyze, access, transmit and use data about Customer which was provided by Customer and/or collected for and/or in connection with the provision of the Services and/or included in any deliverables by itself or third parties, for the purpose to provide the Services in accordance with the contract, improving or expanding other service offerings and the creation of individual offers for Customer. This right of use shall not exist with respect to Customer's registered intellectual property rights.

## 13 Confidentiality

Siemens and Customer shall treat as confidential all information, business matters and documents (hereinafter referred to as „Information“) to which they have become privy in connection with the contract and which have been marked as confidential or reasonably identifiable as confidential (“Confidential Information”), unless they were already in the public domain through other means. This duty shall survive the termination of the contract for 3 years. Siemens and Customer shall impose an equivalent duty on their employees who may come into contact with such information. Siemens is entitled to disclose Confidential Information to subcontractors and Affiliates provided they are obligated under a confidentiality covenant equivalent to this provision.

## 14 Export Control

- 14.1 Customer is obligated to provide all information and documents required for export, shipment or import.
- 14.2 If Customer transfers Products (hardware and/or software and/or technology as well as corresponding documentation and/or works and services, regardless of the mode of provision, and/or including all kinds of

technical support) provided by Siemens to a third party worldwide, Customer shall comply with all applicable national and international (re-) export control regulations. In any event Customer shall comply with the (re-) export control regulations of the Federal Republic of Germany, of the European Union and of the United States of America.

- 14.3 If required to conduct export control checks, Customer, upon request by Siemens, shall promptly provide Siemens with all information pertaining to particular end customer, destination and intended use of products provided by Siemens, as well as any export control restrictions existing.

- 14.4 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 export control regulations by Customer, and Customer shall compensate Siemens for all losses and expenses resulting thereof, unless such noncompliance was not caused by fault of Customer. This provision does not imply a change in burden of proof.

## 15 Remote Access/Remote Services

- 15.1 Siemens is entitled to provide the Services via remote access through a secure telecommunications platform via remote access (hereafter: “Remote Services”).

- 15.2 Technical and organizational process of the Remote Services

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 Customer's safety, cyber security and other requirements. Customer remains at all times responsible for the security of humans, machines and the Equipment.

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

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 Customer.

Siemens is entitled to modify or amend the existing security concept, so far as the performance of Services via remote access is not compromised. Prior to implementing an amended security concept, Siemens will inform Customer of the amended security concept. In the event the implementation is contrary reasonable interests of Customer, 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 Customer are unable to agree on the security concept, Customer is entitled to terminate the contract for such Service Elements that include Remote Services. In any case an amended security concept will become effective 8 weeks after receipt by Customer.