

# SIEMENS

## Standard Terms and Conditions for the Erection, Supervision, Commissioning and similar On-Site Services

Date: March 2017

### 1 Scope and Execution of Services/ Contract Documents

- 1.1 The scope and quality of, and all terms for, the supplies and the services ("**Services**") are set forth exclusively in corresponding written declarations of the parties as well as in these terms and conditions and its exhibits ("**Agreement**").
- 1.2 The Customer's general terms and conditions shall apply only if expressly accepted by Siemens in writing.
- 1.3 Siemens is entitled to partial provision of the Services unless this would be unacceptable for the Customer.
- 1.4 All references to a "**Party**" in this Agreement shall be a reference to Siemens or Customer, as the case may be. All references to "**Parties**" in this Agreement shall be a reference to Siemens and Customer.

### 2 Provision of Services

- 2.1 Siemens reserves the right to modify the design, material and/or appearance of any Service to the extent any such modification does not constitute a change of the agreed characteristics/specifications of the Services to the detriment of the Customer.
- 2.2 Customer and Siemens shall be entitled to give instructions only to their respective personnel. Customer shall not be entitled to instruct Siemens' employees with regard to the Services.
- 2.3 Unless otherwise agreed to in writing, Siemens shall provide the Services in a diligent manner according to the standard determined by Siemens and within a reasonable customary period.
- 2.4 Siemens shall be entitled to perform the Services through subcontractors.

### 3 Right to use Documentation

For cost estimates, drawings and other documents ("**Documents**"), Siemens reserves all rights, title and interest regarding all intellectual property rights including but not limited to copyright in the Documents. The Documents may only be made available to third parties upon the prior written consent of Siemens and shall be returned without undue delay to Siemens upon request. If necessary for the use of the Services, Customer is granted a non-exclusive, non-transferable, royalty-free license to use the intellectual property in the Documents for the purpose of operation and maintenance of the products and goods supplied by Siemens. Customer shall not be entitled to use these Documents for other purposes, especially not for the reproduction of products, goods or parts thereof. Sentences 1, 2 and 3 of this section 3 shall apply reciprocally for Customer's documents; however, Siemens shall be entitled to use them for the provision of the Services and may make them available to third parties to whom Siemens is permitted to subcontract Services.

### 4 Working Hours

The "Exhibit to the Standard Terms and Conditions for the Erection, Supervision, Commissioning and similar on-site Services" ("**Exhibit**") defines in its section A the normal working hours per week, which shall normally be allocated to five working days. The normal working hours per working day cover the period between 6.00 a.m. and 8.00 p.m. The Parties may, by written agreement, adjust the actual allocation of working hours to particular working days to suit the special circumstances on-site.

- 4.1 Sundays and public holidays shall be those non-working days observed by the local population in the respective country where the Services are performed. Easter Monday and December 25th shall always be considered public holidays for purposes of the Agreement.

### 5 Fees

- 5.1 Unless the Parties agree in writing on a lump sum or fee based on measurement cost for all or certain Services, the Services shall be charged according to the time and material expended.

#### 5.2 Charges for Services on Time and Material Basis

- 5.2.1 For Services rendered during normal working hours the rates listed in section B of the Exhibit shall apply. For hours worked in excess of the normal weekly or daily working hours as well as for work during the night or on Sundays or public holidays, the supplemental rates listed in section C of the Exhibit shall apply in addition to the rates listed in section B of the Exhibit.

Work by the Siemens personnel of more than eight hours per day shall qualify as overtime, so that section C of the Exhibit applies.

For work to be executed under exceptional environmental conditions such as dirty, dangerous or unhealthy conditions, the supplemental rates according to section D of the Exhibit shall apply.

Travelling time from and to Austria as well as contract related preparation and winding-up time shall be charged for in accordance with section B of the Exhibit, unless such times exceed 12 hours per day in which case the supplemental rates listed in section C of the Exhibit will apply in addition. Supplemental rates according to section C of the Exhibit shall also apply to daily travel directly to and from the lodgings, if such travel exceeds half an hour for each journey.

In the event that the Siemens personnel is unable to work the total of the normal working hours per week due to the reasons set out in section 12 or due to public holidays in the respective country where the Services are performed, the shortfall shall be charged for as normal working hours but without supplemental rates. The same shall apply to any other waiting time due to reasons beyond Siemens' control.

Unless otherwise agreed to in writing, the Customer shall certify on the work sheets submitted to it once a week the number of hours worked by the Siemens personnel. Should the Customer fail to give such certification in time (max. 2 days after receipt of the work sheets), the work records maintained by the Siemens personnel shall serve as a basis for the price calculation.

Siemens may adjust the rates set out in the Exhibit when required to raise rates/salaries payable to its employees due to statutory provisions or trade union agreements or in accordance with the yearly publications for basic collective wages of the Austrian Electrical and Electronics Industry. The Customer shall be informed accordingly 4 weeks before the new rates become effective.

The Customer may object to such price adjustment within a period of 4 weeks. In the event that the Customer does not object within the specified period in writing, the price adjustment is deemed to have been accepted. If the Customer objects to the price adjustment within the specified period, the Parties shall attempt to arrive at a mutually satisfactory regulation within a further period of 4 weeks. If this is not possible, either Party shall have the right to terminate the Agreement, and the provisions of section 22.3 shall apply.

#### 5.2.2 Travelling and Related Expenses

Costs incurred for travelling to and from Austria as well as for journeys for or in conjunction with the provision of the Services within the country where the Services are performed shall be charged at cost in accordance with section E of the Exhibit.

Necessary related expenses as for example for transportation, import/export of baggage, passport and visa charges, entry, residence and labor permits, medical examination upon leaving from and returning to Austria as well as preventive inoculation of the Siemens personnel shall be reimbursed by the Customer.

#### 5.2.3 Daily Allowance/Living Expenses

To cover the costs for lodging, food and related expenses during the stay abroad, the Customer shall pay for each day and employee a daily allowance or living expenses (as the case may be) as listed in sections F and G of the Exhibit. In case of increase of the costs of living abroad, Siemens shall be entitled to request an adjustment of such daily allowance and living expenses. The Customer shall be informed accordingly 4 weeks before the new daily allowance/living expense becomes effective. For objections against such an adjustment the provisions of section 5.2.1, last paragraph, shall apply accordingly.

These daily allowances/living expenses shall also be charged to the Customer for that period of time during which the Siemens personnel is unable to work due to illness or accident. Should Siemens personnel be hospitalized the daily allowances/living expenses may be reduced accordingly.

Unless otherwise agreed to the contrary the Customer shall pay such daily allowance/living expense fourteen days in advance. The Customer shall also advance such daily allowance/living expense plus reasonable personal travelling allowances for authorized absence from the site.

In all cases of such authorized absence from the working area the Customer shall bear the costs of retaining the lodgings of the Siemens personnel as well as other related fixed costs.

#### 5.2.4 Outfitting Allowances

If the Siemens personnel provides the Services in areas with unusual climatic conditions as compared to those of Central Europe, the Customer shall bear the costs for suitable outfits.

#### 5.2.5 Home Leave

The Siemens personnel shall be entitled to home leave as stipulated in section H of the Exhibit.

The Customer shall bear the costs of the Siemens personnel travelling to and from Austria including necessary related expenses and travelling expenses as stated in section F of the Exhibit. The travelling time for the journey home and back to the site shall be charged for in accordance with section B of the Exhibit.

#### 5.2.6 Tools and other Equipment (e. g. Camping Equipment and Vehicles)

Unless otherwise agreed to in the Agreement, tools, measuring instruments and test equipment as well as other equipment required by Siemens for the performance of Services ("**Equipment**") has to be supplied by the Customer. If Equipment is provided by Siemens, Customer shall be charged for in accordance with section I of the Exhibit beginning with the day of dispatch until returned to Siemens. Should the Customer fail to return any Equipment provided by Siemens (e.g. camping equipment or vehicles) at the latest upon the date of completion or termination of the Services, the Customer shall reimburse Siemens the cost of replacement of such Equipment.

Any consumable tools are to be bought by the Customer from Siemens at the then current prices and in accordance with the then applicable General Terms of Delivery issued by the Austrian Electrical and Electronics Industry Association (FEEL), which are available under [www.feel.at/services](http://www.feel.at/services).

#### 5.2.7 Additional Expenditures

Additional expenditures, which may be incurred by Siemens due to any of the events described in section 12 or as a result of delay caused by the Customer, shall be borne by the Customer. Such additional expenditures may include, without limitation, waiting time, preservation of materials or repeated starting of the works. Labor costs shall be charged for in accordance with subsection 5.2.1 above.

#### 5.2.8 Supplies of Material

Any receipt of supplies of material during the performance of the Services from the other Party to the Agreement shall be acknowledged in writing by the recipient Party.

### 5.3 Charges based on a Lump Sum

5.3.1 Unless agreed otherwise in the Agreement, a lump sum payment agreed for Services shall cover all Services to be rendered by Siemens in accordance to the Agreement and is based on working conditions and other circumstances indicated in writing to Siemens by the Customer at the date of signature of the Agreement. The lump sum is based on the normal working hours per week in accordance with section A of the Exhibit.

5.3.2 Unless agreed otherwise in the Agreement, upon Siemens' request, the Customer shall once a week certify the number of hours actually worked by the Siemens personnel.

5.3.3 For additional expenditures and supply of material subsections 5.2.7 and 5.2.8 shall apply accordingly.

#### 5.4 Fees based on a Measurement Cost

5.4.1 To the extent fees based on a measurement cost have been agreed, the relevant Services performed shall be measured and based on such measurement. Such Services shall be charged for in accordance with the schedule of rates per measured quantity of each item agreed to in the Agreement.

Unless agreed otherwise in the Agreement, travelling and related expenses, outfitting allowances as well as daily allowances and living expenses shall be charged for in accordance with subsection 5.2 in addition to the fees based on measurement cost.

5.4.2 For additional expenditures and supply of material subsections 5.2.7 and 5.2.8 shall apply accordingly.

### 6 Taxes, Duties and Fees

In case any taxes, duties or national insurance charges as well as other fees (including those to be paid in the future) are levied on Siemens or its personnel in the country where the site is located arising through the fact of Siemens rendering Services in such country, such taxes, duties and charges shall be reimbursed by the Customer.

### 7 Customer's Obligations

7.1 The Customer shall cooperate as required and timely perform its duties of cooperation in order to ensure that the Siemens personnel is able to commence the performance of the Services in time and to carry them out in an uninterrupted manner. In particular, the Customer shall at its cost and expense:

7.1.1 make available in due time the labor qualified for the work as is necessary to allow or facilitate the performance of the Services, as for example, crane operators, gas and electric welders, bricklayers, carpenters and other trades together with the equipment they require. The Customer's employees who are involved in the performance of the Services shall at all times remain in the employment and under the responsibility, including without limitation the insurance responsibility, of the Customer. If necessary the Customer shall make available qualified interpreters. Personnel that is considered to be unqualified by Siemens, may be rejected by Siemens and shall be replaced without undue delay at Customer's cost.

7.1.2 unless agreed to otherwise in the Agreement, be responsible for the timely performance of all excavations, foundation, building, caulking, scaffolding, plastering, painting and all other preparatory work and supplies required as well as all other related works unusual in the electric industry together with the procurement of all necessary equipment and material.

7.1.3 supply all commodities and material necessary for the performance of the Services such as props, timber supports, cement, cleaning and sealing material and lubricants, fuels etc. as well as scaffold, lifting tackle and other equipment. All equipment, objects and material shall be supplied in perfect condition.

7.1.4 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.

7.1.5 be responsible for adequate safety precautions on-site against theft, damage, destruction and other adverse factors. Materials lost or damaged shall be replaced or repaired at the Customer's cost.

7.1.6 implement any required operational and legal safety measures, ensuring that the Services can be performed without risk for the employees. If such risks arise, Siemens shall be informed immediately.

7.1.7 timely provide any protective clothes and devices required by the special circumstances on-site or as per applicable laws and regulations. Customer shall provide continuous inspection and replenishment thereof. Customer will, if required, provide security or escort personnel to escort Siemens' employees.

7.1.8 unless otherwise agreed, make available sufficient and suitable transport for personnel, tools, equipment and material.

7.1.9 provide remote access to the items on which the Services have to be performed if required.

7.1.10 obtain any permits, approvals, consents or authorizations from any relevant authority, except to the extent that these can only be obtained by Siemens, provided however that any delay or impossibility in obtaining such shall not constitute a breach of Siemens' contractual obligations and Siemens shall be entitled to a reasonable adjustment in all affected deadlines.

7.2 Before commencement of the Services, the Customer shall (i) supply all information necessary for Siemens to perform the Services in English or German language and in the metric system, which include in particular, but without being limited to, all drawings with regard to hazards of the plant, local situation, applicable safety regulations of the Customer, location of underground power cables, gas and water pipes or similar installations together with static's data for structures, and (ii) nominate a representative on the site who is fluent in English or German, the position to procure the making of binding decisions and who is generally available during normal working hours as Customer's single point of contact for Siemens.

7.3 The Customer shall ensure free, unimpeded and unrestricted access to the site where the Services have to be performed for Siemens personnel and personnel deployed by Siemens.

7.4 The Customer shall make available lunch areas, facilities for the supply of food and accommodation, stores, workrooms and sanitary facilities and day rooms on the working area as reasonably required according to European standard. On selecting the accommodation facilities the Customer shall endeavor to make available hotel rooms or equivalent quarters.

The accommodation facilities, work and day rooms shall be such that the personal belongings of the Siemens personnel are safe from theft, damage, destruction or other adverse factors. In addition, such areas have to be dry, well illuminated and protected from adverse weather conditions. Any hazard to the health and security of the Siemens personnel must be eliminated. The sanitary facilities have to be kept clean and functioning at all times. In warm or tropical climates accommodation facilities shall be equipped with air conditioning and refrigerators.

7.5 The Customer shall be solely responsible for the coordination of third parties commissioned by the Customer.

7.6 At Siemens' request, Customer shall support Siemens free of charge in the problem analysis. Customer shall provide incident reports and false/error messages as well as data and protocols appropriate for analyzing the failure.

7.7 If a Service cannot be performed in the required manner or can only be performed with delay for reasons for which Siemens is not responsible, in particular, without being limited to, if (i) due to the fact that one or several of the general or special duties of cooperation have not been performed or have not been performed on time by Customer or Customer is responsible for missing an agreed deadline; or if (ii) the information received from Customer is changed without approval from Siemens or should such information be false or misleading; Siemens may charge the additional expenses incurred by it to the Customer, including all waiting periods, according to section B of the Exhibit. Any deadlines and periods shall be reasonably extended.

7.8 Should the result of the Services as contemplated at the time of the signature of the Agreement be rendered unachievable or if Siemens cannot reasonably be expected to perform the Services, as a consequence of the events referred to in subsection 7.7 above, it shall be considered a material breach of the Agreement by Customer and Siemens may terminate the Agreement and the provisions of section 22.3 shall apply.

## 8 Safety at Work

8.1 The Customer shall take any and all measures required according to statutory regulations in force at the site of the Services or otherwise necessary for the protection against accidents. The Customer shall inform the Siemens personnel in writing about the regulations in force regarding safety at work and instruct Siemens with respect to any hazardous conditions existing.

8.2 The Customer acknowledges that Siemens will comply and is bound by the laws and regulations applicable in Austria for the prevention of accidents and generally related to safety at work, which might include without limitation the rules and regulations regarding compliance with the regulations relating to the handling of hazardous materials, such as asbestos, PCB, etc. If, in consequence thereof, Siemens should be delayed or prevented from performing the Services in whole or in part such event shall not constitute a breach of Siemens' contractual obligations and Siemens shall be entitled to an adjustment in deadlines for performance and to compensation for additional costs incurred.

8.3 The Customer shall give the necessary assistance in cases of accidents or illness and shall in particular provide at his own expense adequate first aid, medical care and transportation facilities for immediate transfer to hospital.

## 9 Working Permits

9.1 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.

9.2 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.

## 10 Replacement of Personnel

Siemens may at its own expense and at any time during the performance of the Services replace any of its personnel. Where the Customer cannot reasonably be expected to employ a specific member of the Siemens personnel for reasons related specifically to that person Siemens shall endeavor to replace that person.

## 11 Delay in Performance

11.1 The scheduled and contractually agreed completion of Services requires that the Customer properly complies with its obligations including the agreed payment terms. The agreed schedule shall be appropriately extended where the foregoing obligations are not met in time or otherwise agreed to in the Agreement.

11.2 If Siemens is hindered to meet an agreed date stipulated in this Agreement for reasons not solely attributable to Siemens, the deadlines shall be extended adequately and Customer shall compensate Siemens for additional work and efforts in connection with such hindrance.

11.3 The schedule shall also be deemed to have been met even though minor Services may yet be required as long as the outstanding Services do not adversely affect the use of the Services.

11.4 If the completion of Services is delayed for reasons solely attributable to Siemens and if the Customer can prove that it has suffered a loss as a result of such delay, Customer shall be entitled to claim liquidated damages. The amount of the liquidated damages shall be governed by the nature of the fee negotiated for the Service in question:

(i) For Services for which a lump sum has been agreed: If a final deadline for completion of the Services has been agreed, Customer may demand liquidated damages of 0.5% of the agreed lump sum applicable to the delayed Service for each full week of delay. The liquidated damages are limited, however, to a maximum total of 5% of the value of the lump sum applicable to the delayed Service.

(ii) For Services on a time and material or on a measurement cost basis: If a final deadline for completion of the Services has been agreed, Customer may demand liquidated damages of 0.5% of the value of the final time and material or measurement cost fee applicable to the delayed Service for each full week of the delay. The liquidated damages are limited, however, to a maximum total of 5% of the value of the final time and material or measurement cost fee applicable to the delayed Service.

11.5 Liquidated Damages shall be the Customers sole and exclusive right and remedy for delay available to Customer, in lieu of any other or further rights and remedies.

## 12 Force Majeure

12.1 Neither Party shall be responsible for any delay or other failure in performing its contractual obligations hereunder if the performance of such obligations is prevented or hindered as a result of Force Majeure (as defined below). This also applies should a Party be in default with the performance of its contractual obligations at the point in time when the Force Majeure occurs.

- 12.2 "Force Majeure" means any circumstances beyond the reasonable control of a Party, including but not limited to act of God, fire, flood, earthquake, embargo, strike and lock-out, virus attacks and other attacks on IT systems by third parties (e.g. hacker attacks), acts or omissions of civil or military authorities (in particular, but not limited to currency restrictions, suspension or withdrawal of import or export permits), war, acts of sabotage or terrorism or Siemens' determination of a security threat for the region or country where the site is located, even if these circumstances occur with a supplier, vicarious agent (Erfüllungsgehilfe) or an Affiliate.
- 12.3 For the purposes of this Agreement, "**Affiliate**" shall mean a corporation, company or other entity, now or hereafter, directly or indirectly, owned or controlled by, or owning or controlling, or under common control with one of the Parties, but such corporation, company or other entity shall be deemed to be an Affiliate only so long as such ownership or control exists. For purposes of this definition "control" of a corporation, company or other entity shall mean to have, directly or indirectly, the power to direct or cause the direction of the management and policies of a corporation, company or other entity, whether (i) through the ownership of voting securities providing for the right to elect or appoint, directly or indirectly, the majority of the board of directors, or a similar managing authority, (ii) by contract or (iii) otherwise.
- 12.4 A Party seeking relief shall notify the other Party without undue delay after the occurrence of the Force Majeure event. Performance shall be extended by a period of time equal to the period of the delay and its consequences including any period necessary for the resumption of the Services. In addition, the Parties shall agree on an appropriate adjustment of all other contractual obligations, such as fees.
- 12.5 If one or more Force Majeure events continue to cause delay for more than three (3) months in the aggregate, either Party may terminate the Agreement and section 22.3 shall apply.
- 12.6 Customer shall reimburse Siemens for all additional costs and expenses arising from a Force Majeure event.
- 13 Transfer of Risk**
- 13.1 Goods included in the Services are delivered EXW (INCOTERMS 2010), provided nothing to the contrary has been agreed in the Agreement. Risk for delivered goods shall pass to the Customer in accordance with the agreed INCOTERMS.
- 13.2 The risk of accidental damage to or loss of the Services in whole or part shall remain with the Customer.
- 14 Acceptance**
- 14.1 Unless otherwise agreed in writing no formal acceptance of the Services rendered shall be required. Where no formal acceptance has been agreed, Services shall be deemed accepted at the time of their performance.
- 14.2 Where the Parties have agreed on a formal acceptance, Siemens shall notify the Customer in writing when the Services are ready for acceptance and acceptance shall take place within 7 days.
- 14.3 Should a formal acceptance not have taken place within 7 days from the date of notification of readiness, due to reason beyond Siemens' control, acceptance shall be deemed to have taken place upon expiry of said period of time.
- 14.4 In any event acceptance shall be deemed to have taken place upon the Customer's taking into operation of the item in relation to which the Services have been provided or use of the Services for commercial purposes.
- 14.5 The Customer shall bear all costs of acceptance.
- 15 Warranty**
- 15.1 Where the Services are comprised exclusively of the delivery of goods or the delivery of goods and performance of work, Siemens shall be liable for defects as follows:
- Siemens shall, at its sole discretion and at its expense, either repair, replace or modify the defective goods delivered and/or perform the defective Services again, provided that the goods and/or Services were defective at the time of transfer of risk. Insofar as defective parts of the delivered goods have to be replaced, such defective parts shall pass into ownership of Siemens. Siemens shall be responsible for the necessary disposal in a legally compliant manner.
- 15.2 Siemens' obligation to repair, replace or modify defective goods or re-perform defective Services under section 15.1 shall continue for 6 months from acceptance or deemed acceptance (as defined in section 14) of the goods or Services (the warranty period). In the event that any Services are defective and are rectified under warranty, the rectified Services shall benefit from the remainder of the original warranty or a new warranty of 6 months (whichever shall be the longer), subject to the proviso that all warranties on any rectified Services shall end no later than 6 months from the end of the warranty period that applied to the Services delivered in the very first instance.
- 15.3 With respect to Services not covered under section 15.1 (e.g. where such Services do not include the delivery of any goods) Siemens shall be liable for defects as follows:
- Should Services not be performed in accordance with the terms of the Agreement for reasons for which Siemens is responsible, Siemens shall re-perform the defective Services if and to the extent Customer has notified Siemens without undue delay, but no later than within two (2) weeks of the defective performance of the Services. If Siemens fails to diligently start with the re-performance of the Service in accordance with the terms of the Agreement within two (2) weeks of notification of a defect, Customer is entitled to terminate that part of the Agreement affected by the defect by written notice with immediate effect.
- 15.4 Siemens' obligation to re-perform defective Services under section 15.3 shall continue for 3 months from acceptance or from deemed acceptance (as defined in section 14) of the Services (the warranty period).
- 15.5 Notifications of defects by Customer shall be given in written form without undue delay.
- 15.6 In the case of notification of a defect, Customer may withhold payments to an amount that is in a reasonable proportion to the defect. The Customer, however, may withhold payments only if the subject-matter of the notification of the defect involved is justified and incontestable. The Customer has no right to withhold payments to the extent that its claim in respect of a defect is outside of the relevant warranty period. Attendance or work undertaken by Siemens for the purpose of remediation in response to a notification of defects that are not covered by the warranty shall entitle

Siemens to claim reimbursement of its incurred cost and expenses from Customer.

15.7 Siemens shall be entitled to a reasonable period of time for rectification of a defect under warranty.

15.8 If the rectification of defective Services (including goods) still fails after three attempts, and Customer is, due to the ongoing defect, deprived of substantially the whole benefit of the Services, Customer may terminate the Agreement and shall pay the compensation according to section 22.3

15.9 There shall be no claim for defects for insignificant deviations from the agreed quality, of only minor impairments of usability, for normal wear and tear or damages occurring after the transfer of risk, including from faulty or negligent handling, excessive strain, improper operating materials, unsuitable equipment, defective civil work, unsuitable building ground, non-reproducible software errors or due to special external influences which are not identified within the Agreement. In addition, software errors are only deemed a defect if the defect occurs in the most current software version at the given time. If improper modifications or repair work are undertaken by Customer or a third party, there shall be no claim for defects or for the resulting consequences thereof.

15.10 The Customer shall pay the costs of dismantling, transportation (including transportation between the onshore base and offshore site), re-assembly and re-installation of equipment affected under this warranty, transportation from the onshore base of personnel, offshore accommodation and messing (including helicopter transportation).

15.11 If the Services comprise software, which also contains software of third parties, for which Siemens has no rights of use with regard to the source code, Siemens shall only be obliged to rectify defects insofar as Siemens is in possession of an error-free version or, with reasonable endeavors, is able to obtain an error-free version.

15.12 Siemens shall have no liability for claims for damages by Customer due to defects or a qualitative impairment of performance other than as expressly set out in this Agreement.

15.13 The rights and remedies expressly provided for in this section 15 shall be the sole and exclusive rights and remedies available to Customer, in lieu of any other or further rights and remedies.

## 16 Defects in Title, Proprietary Rights and Copyright

16.1 Siemens shall perform the Services free from defects in title and free from an infringement of third parties' industrial property rights and copyrights ("IPR") with respect to the country where the Services are provided. If a third party asserts a justified claim against the Customer based on an infringement of an IPR by the Services provided by Siemens under the terms of the Agreement and used in conformity with the Agreement, Siemens shall be liable to Customer within the relevant time period stated in section 15.2 and 15.4 as follows:

With respect to the infringing Services Siemens shall, at its sole discretion and cost, either

- (i) obtain a right to use,
- (ii) modify them so that they do not infringe the IPR,
- (iii) replace them or

(iv) take them back and reimburse the respective portion of the fees.

16.2 Siemens shall only be subject to the above obligations, if Customer

(i) promptly notifies Siemens in writing about any claims asserted by the third party,

(ii) does not acknowledge an infringement of an IPR,

(iii) leaves any protective measures and settlement negotiations to Siemens' discretion,

(iv) duly cooperates with Siemens in defense of the claim and,

(v) upon Siemens' request, provides all necessary information and documentation.

If Customer stops using the Services, Customer shall inform the third party explicitly that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.

16.3 Customer's claims and rights shall be excluded if Customer is responsible for the infringement of the IPR.

16.4 Furthermore, Customer's claims and rights shall be excluded if the infringement of the IPR is caused

(i) by specifications or instructions made by Customer,

(ii) by a use not foreseeable by Siemens or outside the specification/contractually intended use,

(iii) by the Services being modified by Customer,

(iv) by the Services being used together with products not provided by Siemens or

(v) by use or distribution of other than the most current software.

16.5 Any further and other claims and rights against Siemens arising from or in connection with a defect in title or an infringement of IPR are excluded.

## 17 Confidentiality

17.1 "Confidential Information" shall mean any information and data disclosed by one Party to the other Party in connection with the performance of this Agreement and which -when disclosed- is identified or otherwise designated by the disclosing Party as "Confidential" or with similar terms, or where it is clearly in the interest of the disclosing Party that the information or data is kept confidential.

17.2 All Confidential Information

(i) shall be used by the receiving Party exclusively for the purpose of this Agreement,

(ii) shall not be distributed or disclosed in any way or form by the receiving Party to anyone except to those employees of the receiving Party or any of its Affiliate or those of its subcontractor or subcontractor of any of its Affiliate, who in each case reasonably need to know such Confidential Information in connection with the performance of this Agreement and who are bound to confidentiality in writing to an extent not less stringent than the obligations imposed on the receiving Party under this Agreement and

(iii) shall be kept confidential by the receiving Party with the same degree of care as is used with respect to the receiving Party's own equally important confidential information to avoid disclosure to any third party, but at least with reasonable care.

17.3 The obligations under section 17.2 shall not apply, however, to any Confidential Information which:

- (i) was in the receiving Party's possession without an obligation to confidentiality prior to receipt from the disclosing Party;
- (ii) is at the time of disclosure already in the public domain or subsequently becomes available to the public through no breach of this Agreement by the receiving Party or breach of the corresponding obligations of any Affiliate, the Party's subcontractors or the Affiliate's subcontractors;
- (iii) is lawfully obtained by the receiving Party from a third party without an obligation to confidentiality, provided such third party is not, to the receiving Party's knowledge, in breach of any obligation to confidentiality relating to such information;
- (iv) is developed by the receiving Party independently;
- (v) is approved for release in writing by the disclosing Party or
- (vi) the disclosing Party is required to disclose by any ruling of a governmental or regulatory authority or court or by mandatory law, provided that written notice of such ruling is given without undue delay to the disclosing Party so as to give the disclosing Party an opportunity to intervene and provided further that the receiving Party uses reasonable efforts to ensure that the Confidential Information is treated confidentially.

17.4 If one Party discloses or distributes Confidential Information in accordance with section 17.2 lit. (ii), such Party shall be liable for acts resulting in unauthorized distribution or disclosure of such Confidential Information as if such acts or omissions had been its own acts.

17.5 Within 90 days after termination or expiry of this Agreement the disclosing Party may request in writing from the receiving Party that the receiving Party at its discretion either returns or destroys all Confidential Information in its possession received from the disclosing Party. This shall not apply to copies of electronically exchanged Confidential Information made as a matter of routine information technology backup and to copies which must be stored by the receiving Party according to provisions of mandatory law.

17.6 The obligations mentioned in this section shall remain valid for a period of 3 years after termination of this Agreement.

## 18 Change Requests/Changes in Law

18.1 Each Party to the Agreement is entitled to submit written change requests concerning the scope of performance during the term of the Agreement.

18.2 Any change request shall only become effective once both Parties to the Agreement have signed a variation to the Agreement. The Parties to the Agreement shall respond to a change request of the other Party to the Agreement within ten (10) working days. If Customer does not accept an offer by Siemens following a change request by Customer, Customer shall pay a separate fee that had been stated in advance by Siemens as a fixed price for developing the offer.

18.3 Until the change request has been signed, the Services shall be provided on unchanged terms.

18.4 Performance of the Services shall be based on laws, regulations, engineering standards or other technical regulations, applicable to such Services in the country

where the Services are to be performed only to the extent those have been communicated by the Customer in advance and expressly accepted by Siemens in writing. Performance shall also be based on the current laws and directives of the government agencies notified to Siemens by Customer if and to the extent they are applicable on the effective date of the Agreement and are mandatorily applied to the performance of the Services.

18.5 Customer shall inform Siemens promptly of any mandatory legal requirements applicable to the performance of Services at Customer's location and/or the place of delivery. If such notification occurs after the effective date of this Agreement, Siemens shall be entitled to an adjustment in price and deadlines of the performance of the Services as required and shall in no event be considered to be in breach of its contractual obligations. Delays and costs resulting from the failure of the Customer to inform and issue a change order shall be the liability of Customer.

18.6 If Siemens notices that there is a change in the current laws, regulations, engineering standards or other technical regulations applicable to the Services or that new ones are enacted or issued, Siemens shall advise Customer of the resulting changes in regards to the scope of performance of Services and take such changes into account upon Customer's request. In case of changes resulting from mandatory legal requirements, Customer shall issue a change order for such changes without undue delay and shall pay for them. Siemens is entitled to refuse to perform the relevant Services until a change order has been issued by Customer in order for the Services to comply with mandatory legal requirements. Delays and costs resulting from the failure to issue a change order shall be the liability of Customer.

18.7 Changes generating increased or reduced costs and/or having an impact on deadlines or performance of Services shall be the liability or to the benefit of Customer.

## 19 Liability

Without prejudice to any limitations and exclusions of liability stipulated elsewhere in this Agreement, the liability of Siemens arising out of or in connection with this Agreement, including its termination or rescission and recourse for expenditures, shall be limited as follows:

19.1 Siemens shall be liable for bodily injuries, death or wilful misconduct in accordance with the applicable law.

19.2 Irrespective of the underlying legal theory (whether under contract, strict liability, tort or otherwise) Siemens shall only be liable for damage to tangible property caused by a negligent act or omission of Siemens or any of its auxiliary persons (Erfüllungsgehilfen). In case of damage to any storage media, any compensation by Siemens for the recovery or replacement of any stored data and information shall be excluded.

19.3 Siemens shall in no event be liable for loss of profit, costs of capital, loss of production, interruption of operations, contractual claims by third parties, loss of savings, loss of use, loss of data and information, financing costs, indirect or consequential damages or for any other loss or cost of a similar type.

Subject to section 19.1, the total liability of Siemens under or in connection with this Agreement including without limitation any liquidated damages, damage to tangible property and any indemnities shall in the

aggregate be limited to a maximum of 50 % of the lump sum or of the value of the final time and material or measurement cost fees paid respectively.

- 19.4 The rights and remedies expressly provided for in this Agreement shall be the sole and exclusive rights and remedies available to Customer, in lieu of any other or further rights and remedies.
- 19.5 Any and all liability of Siemens arising out of or in connection with this Agreement shall cease at the end of the applicable warranty period stipulated in section 15, but in any event no later than three years after the respective claim arises.
- 19.6 Any and all limitations and exclusions of liability stipulated in this section 19 shall apply irrespective of the underlying legal theory (whether under contract, strict liability, tort, indemnity or otherwise),
- 19.7 The limitations and exclusions of liability provided in this Agreement shall also apply to the benefit of any directors, employees, agents, sub-suppliers, sub-contractors, and any auxiliary persons (Erfüllungsgewerkschaften) of Siemens.

## 20 Data Privacy

Both Parties shall comply with the applicable statutory regulations governing the protection of personal data. Customer shall ensure that all legal requirements (e.g. by asking for consents) are met in a manner that allows Siemens to perform its contractual obligations without violating applicable laws.

## 21 Export Control and Customs

### 21.1 Reservation Clause

Siemens shall not be obligated to fulfil this Agreement if such fulfilment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargos or other sanctions. Customer is obligated to provide all information and documents required for export, shipment or import.

### 21.2 Compliance with Export Control Regulations

21.2.1 If Customer transfers goods or services (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 Customer shall comply with all applicable national and international (re-) export control regulations. In any event of such transfer of goods or services, Customer shall comply with the (re-)export control regulations of Austria, the Federal Republic of Germany, the European Union and the United States of America.

21.2.2 Prior to any transfer of goods, works and services provided by Siemens to a third party Customer shall in particular check and guarantee by appropriate measures that

- (i) There will be no infringement of an embargo imposed by the European Union, by the United States of America and/ or by the United Nations by such transfer, by brokering of contracts concerning those Deliverables or by provision of other economic resources in connection with those Deliverables, also considering the limitations of domestic business and prohibitions of by-passing those embargos;
- (ii) Such Deliverables 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 is provided;

- (iii) The regulations of all applicable Sanctioned Party Lists of the European Union and the United States of America concerning the trading with entities, persons and organizations listed therein are considered.

21.3 If required to enable authorities or Siemens 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 goods, works and services provided by Siemens, as well as any export control restrictions existing.

### 21.4 Destination Control Statements (DCS)

Deliverables labeled with "AL" not equal to "N" are subject to European export authorization when being exported out of the EU. Deliverables labeled with "ECCN" not equal to "N" are subject to US reexport authorization. Even without a label, or with label "AL:N" or "ECCN:N", authorization may be required due to the final end-use and destination for which the deliverables are to be used.

## 22 Contractual Term/Termination and Suspension

22.1 The Agreement shall come into force with signature of the Agreement by both Parties and continue for the duration specified in the Agreement or until the respective Services are provided in accordance with the Agreement, whichever is earlier.

22.2 Both Parties shall be entitled at any time to terminate the Agreement without notice for good cause. A good cause is deemed to exist particularly if:

- (i) The other Party is insolvent, any proceeding is instituted against the other Party seeking to adjudicate such Party as bankrupt or insolvent, or in the case of any such proceeding being dismissed due to insufficient assets; or
- (ii) The other Party is in breach of a material obligation under this Agreement and does not cure such breach within 30 days after having received a written notice of breach from the other Party.

Any termination must be in writing.

22.3 In any case of termination Customer shall pay the following compensation:

- (i) When the Services were offered on a time and material basis or measurement cost basis, Customer shall pay the accrued fees and all expenses until the date of termination.
- (ii) When a lump sum was agreed for the Services, Customer shall pay the compensation which shall be calculated as the agreed compensation minus any expenditure thus saved.

In case of a termination by Siemens according to section 22.2 (ii), Customer shall in addition reimburse Siemens all costs and expenses incurred due to the termination plus reasonable profit.

22.4 Notice of termination shall be given in writing to be effective.

22.5 Siemens may, at its sole discretion, suspend fulfilment of its contractual obligations:

- (i) if Customer is in delay with a payment or part thereof, or
- (ii) if Customer does not perform its duties of cooperation necessary for the performance of the Services, or



- (iii) if Customer becomes insolvent or a proceeding pursuant to section 22.2 (i) hereof is initiated against Customer.

The additional costs incurred by Siemens due to the suspension of its contractual obligations shall be borne by Customer.

## 23 Validity of the Agreement/ Assignment

23.1 Neither Party shall be entitled to assign, novate or transfer the Agreement to a third party without the prior written consent of the other Party. However, Siemens may assign, novate or transfer the Agreement or any part of the Agreement to any of its Affiliates without the consent of customer. Upon such assignment, novation or transfer the respective Affiliate of Siemens shall be solely responsible and liable for the fulfilment of the assigned or transferred part of the Agreement. Siemens will inform Customer of the assignment, novation or transfer without undue delay.

23.2 Supplemental agreements, amendments and additions to this Agreement must be made in writing to be effective and must be signed by duly authorized representatives of the Parties. This requirement for the written form may only be waived in writing. For the avoidance of doubt, e-mail or any other form of electronic communication shall not qualify as a written notice or document.

23.3 If Customer has within the scope of the electronic order process, the ability to insert a "free choice text" (F), statements of Customer inserted into this text (F) are solely for the purpose of internal purchase order processing of Customer. Statements of Customer inserted into this text (F) are not reviewed or taken into consideration by Siemens, are transferred as is without changes and are reproduced on the purchase order documents solely for the purpose internal purchase order processing of the Customer. Therefore, the information provided does not affect the contractual relationship and is not legally binding.

23.4 If provisions of this Agreement are or should become entirely or partially invalid or unenforceable, this shall not affect the validity or enforceability of the remaining provisions. The foregoing shall also apply if the Agreement contains any regulatory gap. Instead of the invalid or unenforceable provision, or in order to close the gap, a ruling shall be used, which, in so far as it is legally permissible, as closely as possible reflects the intentions of the Parties concluding the Agreement or, considering the meaning and purpose of the Agreement and the potential intentions of the Parties had they considered the point at the time of concluding the Agreement.

## 24 Arbitration/ Applicable Law

24.1 All disputes arising out of or in connection with the Agreement, its termination or any amendment of the Agreement, shall be finally settled in accordance with the Rules of Arbitration ("**Rules**") of the International Chamber of Commerce ("**ICC**").

24.2 If the value of the total matter in dispute, including the value of any counterclaims, is less than € 1 million, the tribunal shall consist of one arbitrator and if the value of the total matter in dispute is € 1 million or more the tribunal shall consist of three arbitrators. If the Parties cannot agree whether or not the value is less than € 1 million, the ICC shall decide on the number of arbitrators on written request by one of the Parties.

If the tribunal consists of three arbitrators each Party shall nominate one arbitrator for confirmation by the ICC. Both arbitrators shall agree on the third arbitrator within thirty (30) days after their appointment. Should the two

arbitrators fail to reach agreement on the third arbitrator within the thirty-day period, the ICC shall select and appoint the third arbitrator.

24.3 In general the language to be used in arbitration proceedings shall be English and the seat of arbitration shall be Zurich, Switzerland. In case the Customer is a company registered under Austrian law the seat of arbitration shall be Vienna, Austria and the language to be used in arbitration proceedings shall be German.

24.4 This Agreement shall be governed by the substantive law of Switzerland without regard to that jurisdiction's conflicts of law provisions. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

24.5 Any production of documents shall be limited to the documents on which each Party specifically relies in its submission(s).

24.6 Consolidation of arbitrations pending under the Rules into a single arbitration shall only be possible if the Parties have agreed to consolidation.

24.7 The unsuccessful Party shall bear the costs of the arbitral proceedings. However, the arbitral tribunal may take into account the extent to which each Party has conducted the arbitration in an expeditious and cost-effective manner.