

SIEMENS General Conditions of SALE of Goods & Services (including Software)

1 Interpretation

1.1 In these Conditions:

"Conditions" means these terms and conditions for the sale and purchase of Supplies which are incorporated into and form part of the Contract.

"Contract" means the contract between the Seller and the Purchaser (subject to the provisions of Clause 2) for the purchase and sale of the Supplies, comprising:-
(i) the Seller's quotation (including documents (if any) incorporated by express reference on the face of the quotation) and the acceptance thereof by the Purchaser; or
(ii) the Order and the Seller's acceptance thereof.

together with these Conditions and any written agreement pursuant to Clause 2.2.1.

"Deliver", "Delivered" or "Delivery" means the act of:

- (i) delivering or making available the Supplies ex Works or unless otherwise agreed in writing between Purchaser and Seller; or
- (ii) where assembly, installation, erection or commissioning of the Supplies at Site or otherwise is required, the Seller declaring that the Supplies are ready for acceptance.

Delivery Date(s) means the date or dates provided in the Contract, on which Delivery of the Supplies or instalments of the Supplies are to take place respectively; or the extended date or dates for the same pursuant to the notification issued by the Seller in accordance with Clause 6.11.

"ex Works" means that the Supplies are placed at the disposal of the Purchaser at the Seller's premises or another named place, not cleared for export and not loaded on any collecting vehicle.

"Goods" means the goods (including any instalment of the goods or any parts of them) which the Seller is to supply in accordance with these Conditions and which may (without limitation) comprise or include Software.

"Order" means the written order placed by the Purchaser for the supply of the Goods and/or Services and documents (if any) incorporated by express reference on the face of the Order.

"Party" means the Seller or the Purchaser and "Parties" means both of them.

"Purchaser" means the person, firm or company who accepts a quotation of the Seller for the sale of the Goods and/or Services or who places the Order for the Goods and/or Services.

"Purchaser's Default" means a default of the Purchaser in the manner described in Clause 6.12.

"Seller" means the Siemens company referred to on the face of the Order with whom the Contract is made by the Purchaser.

"Services" means the provision of work and/or other services which are the subject of the Contract that may (without limitation) comprise and include Software and which may relate to installation in accordance with these Conditions.

"Site" means the address for delivery, that part of the address for delivery where the Goods are to be installed and operated, or where any Services are to be performed.

"Software" means the software and firmware items which are comprised or included in or related to the Supplies.

"Supplies" means Goods and/or Services.

- 1.2 Any reference in these Conditions to any provision of a statute and any regulations made in pursuance thereof as from time to time modified or re-enacted, whether before, on or after the date of the Contract, so far as such modification or re-enactment applies or is capable of applying to any transaction entered into prior to completion of the Contract (so far as liability thereunder may exist or can arise) shall be construed as a reference to that provision or regulation as amended, re-enacted or extended at the relevant time and shall include also any past statutory provision or regulation (as from time to time modified or re-enacted) which such provision or regulation has directly or indirectly replaced.

- 1.3 The headings in these Conditions are for convenience only and shall be ignored in construing these Conditions and shall not affect their interpretation.

- 1.4 Words (including words defined in the Contract) importing the singular also include the plural and vice-versa where the context requires. The words "written" and "in writing" include any means of visible reproduction.

2 Basis of the sale

- 2.1 The Seller shall sell and the Purchaser shall purchase the Supplies in accordance with the Contract.

- 2.2 In the event of any inconsistency between these Conditions and other documents forming part of the Contract, the following order of priority shall apply:

2.2.1 Any written agreement between the Parties where the Parties agree that any of the provisions in these Conditions should be superseded with an express reference to this Clause 2.2;

2.2.2 The Seller's quotation and documents (if any) incorporated by express reference on the face of the quotation;

2.2.3 These Conditions; and

2.2.4 The Order.

- 2.3 No variation to these Conditions shall be binding unless agreed in writing and signed by the authorised representatives of the Purchaser and the Seller. Any varying terms proposed by the Purchaser in its Order or any other document of the Purchaser shall not become part of the Contract.

3 Orders, Specifications and Cancellations

- 3.1 No Order shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.

- 3.2 The Purchaser shall be responsible to the Seller for ensuring the accuracy of the terms of any Order (including any applicable specification).

- 3.3 The quantity, quality and description of and any specification for the Supplies shall be those set out in the Seller's quotation (if accepted by the Purchaser) or the Order (if accepted by the Seller). The Seller reserves the right to make any changes in the specification of the Supplies which are required to conform to any applicable statutory requirements or, where the Supplies are to be supplied to the Purchaser's specification, which do not materially affect their quality or performance.

- 3.4 No Order which has been accepted by the Seller may be cancelled, varied or suspended by the Purchaser except with the agreement in writing of the Seller and on terms that the Purchaser shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of the cancellation, variation or suspension.

4 Price

- 4.1 The price of the Supplies shall be the price stated in the Order as accepted by the Seller or in the absence of such Order or acceptance, the written quotation of the Seller. Unless there is any variation as referred to in Clause 4.2, all prices quoted are valid for the period stated in the quotation (and if no period is stated, for up to 30 days only from the date of issuance of the quotation), after which time they may be altered by the Seller without giving notice to the Purchaser.

- 4.2 The quoted prices are based upon the scope of the Supplies referred to in the Seller's written quotation. In the event of any variation in, inter alia, the scope of Supplies ordered including delivery dates from that of the Seller's offer, the Seller reserves the right to vary the prices quoted.

- 4.3 Except as otherwise agreed in writing between the Purchaser and the Seller, all prices are given by the Seller on an ex Works basis, and where the Seller agrees to deliver the Supplies otherwise than at the Seller's premises, the Purchaser shall be liable to pay the Seller's charges for transport, packaging and insurance.

- 4.4 For the provision of Services at the Site, the price shall exclude any incidental costs incurred by the Seller for the purposes and in the course of providing the Services (i.e. travel costs, costs for transporting tools and equipment etc).

- 4.5 The price is exclusive of any applicable goods and services tax ("GST") or other government charge or duty, which the Purchaser shall be additionally liable to pay at the rate and in the manner from time to time prescribed by law. If exemption from taxes is claimed, the Purchaser must provide a certificate of exemption. Any additional costs incurred by the Seller pursuant to any Act of Parliament or any order or regulation made by any governmental body or department shall be paid by the Purchaser. The price shall be net of any withholding tax payable by the Purchaser, and in no event shall the Purchaser be entitled to withhold or deduct any such tax from the price.

- 4.6 The Seller shall be entitled to adjustment of the price (to be mutually agreed in writing) in the event of changes in law or engineering standards applicable to or affecting the Supplies after the execution of this Contract.

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