

# SIEMENS GAMESA STANDARD TERMS AND CONDITIONS OF PURCHASE (GB)

## INTRODUCTION

These Conditions form part of the Contract between Siemens and Supplier for the supply of the Goods and/or Services.

## 1. DEFINITIONS AND INTERPRETATION

1.1 In the Contract the following expressions have the following meanings:

"**Applicable Laws**" means all (i) laws and regulations, (ii) orders, rules, policies, codes of conduct, guidance and directions made by governmental or regulatory bodies, whether or not having the force of law, and (iii) industry standards and good commercial practices; in each case applicable to the provision of the Goods and Services and/or any other activities of Supplier pursuant to or in connection with this Contract.

"**Conditions**" means these Siemens standard terms and conditions of purchase.

"**Contract**" means a contract consisting of the Conditions and the Purchase Order together.

"**IPR**" means patents, rights in inventions, rights in confidential information (including know-how and trade secrets), rights in designs, copyrights and related rights trade mark rights (including passing-off and unfair competition rights, and including trade mark rights in trade names, logos, trade dress and domain names) and database rights, in each case whether trade mark rights (including passing-off and unfair competition rights, and including trade mark rights in trade names, logos, trade dress and domain names) and database rights, in each case whether or not registered and including applications (and rights to apply) for registration, her or not registered and including applications (and rights to apply) for registration, and all rights and forms of protection of a similar nature or having equivalent effect subsisting from time to time in any jurisdiction worldwide.

"**Issued Material**" means any materials (including tools, patterns, samples, models, profiles, drawings, standard specification sheets, printing templates and materials) issued to Supplier by or on behalf of Siemens (and any materials derived from such materials).

"**Goods**" means the goods described in the Purchase Order (including any items delivered as part of a Service).

"**Payment Date**" means the 15<sup>th</sup> day of a month or, in the event the 15<sup>th</sup> day of a month is a non-working day, the next working day.

"**Purchase Order**" means the Siemens purchase order within which these Conditions appear (or to/in which these Conditions are attached/referenced) for the Goods and/or Services, including any special terms and conditions set out in that Purchase Order and any documents incorporated by express reference in that Purchase Order.

"**Services**" means the services described in the Purchase Order.

"**Siemens**" means the Siemens company stated in the Purchase Order.

"**Software**" means any software which is comprised or included in the Goods and/or Services, and its related documentation.

"**Supplier**" means the person referred to on the face of the Purchase Order to whom the Purchase Order is issued.

1.2 In the Contract:

1.2.1 references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced;

1.2.2 references to a "**person**" shall include any individual, firm, company or other body corporate, government or governmental agency, sub-division or authority, or any business trust, estate, trust, joint venture, association or partnership (whether or not having separate legal personality);

1.2.3 an "**affiliate**" means a person under common ownership or control with the relevant party, and includes in the case of Siemens all companies ultimately controlled (directly or indirectly) by Siemens AG;

1.2.4 "**control**" means the ability to direct the affairs of another whether by virtue of contract, ownership of shares or otherwise; and

1.2.5 the words "**including**" and "**include**" shall be construed as if followed by the words "**without limitation**".

1.3 In the event of any conflict between any provision of the Contract, the order of precedence shall be:

1.3.1 any matters set out in the Purchase Order under the heading "special terms and conditions";

1.3.2 the Conditions;

1.3.3 any specification for the Goods and/or Services set out, or incorporated by express reference, in the Purchase Order; and

1.3.4 any other documents incorporated by express reference in the Purchase Order.

## 2. APPLICATION

2.1 The Contract constitutes the whole and only agreement between the parties relating to the Goods and/or Services and supersedes any previous agreements, arrangements and understandings relating thereto. The Contract shall not be varied otherwise than by an instrument in writing signed by each of the parties specifically reciting that it amends the Contract.

2.2 The Purchase Order for Goods and/or Services by Siemens from Supplier shall be deemed to be an offer by Siemens to buy the Goods and/or Services on the terms of the Contract which shall be deemed accepted on the earlier of Supplier (i) expressly giving notice of acceptance or (ii) fulfilling the Purchase Order in whole or part.

2.3 No terms or conditions endorsed upon, delivered or contained within Supplier's quotation, acknowledgement or acceptance of the Purchase Order or any other document issued by or for Supplier shall form part of the Contract and Supplier waives any right which it might otherwise have to rely on such terms and conditions.

2.4 These Conditions shall apply to all Siemens' purchases from Supplier, unless Supplier and Siemens have entered into a framework agreement for the relevant Goods and Services prior to the date of the Purchase Order in which case such framework agreement shall be treated as special terms and conditions for the purposes of Clause 1.3.

## 3. QUALITY AND DESCRIPTION

3.1 All Goods and Services supplied shall:

3.1.1 conform in all respects with the Contract (including the quantity, quality, description and other matters specified in the Purchase Order), be without fault, be of the best available design, be of the best quality materials and workmanship and be fit for any intended use expressly or impliedly made known to Supplier by Siemens;

3.1.2 conform with any sample, drawing, description, specification and/or requirements furnished supplied or advised by Siemens to Supplier;

3.1.3 be executed in a proper and skilful manner by appropriately qualified and experienced personnel; and

3.1.4 comply with all Applicable Laws relating to the Goods and/or the Services, and/or affecting obligations under and the performance of the Contract, including any concerning the manufacture, packaging, storage and delivery of the Goods and/or the performance of the Services.

3.2 Siemens' rights and remedies under these Conditions are in addition to any available to it at law (including statutory implied terms).

3.3 Supplier shall be fully responsible for the Goods and/or Services and any inspection or testing by Siemens shall not diminish or otherwise affect Supplier's obligations under the Contract.

3.4 Supplier shall cooperate with Siemens in all matters relating to the Contract, and comply with all instructions of Siemens including complying with any written or verbal instructions in relation to safety and security while on Siemens' premises.

3.5 Supplier represents and warrants that use by Siemens of the Goods and/or the Services will not infringe any third party's IPR.

3.6 Supplier shall inspect and test the Goods and Services for compliance with the Contract prior to delivery. Supplier shall give Siemens (or Siemens' representatives) such access to its premises and facilities at reasonable times as Siemens may reasonably request to verify its compliance with the Contract, including to inspect and/or test the Goods and/or the Services at any stage before delivery.

3.7 Supplier shall, if requested, supply Siemens with such certificates of origin and/or testing as Siemens may require. Such certificates must state the relevant Purchase Order numbers together with any item numbers.

## 4. DEFECTS AND REJECTION

4.1 A "**Defect**" means any failure of the Goods and/or Services to comply with the Contract.

4.2 In relation to any and each Defect, Siemens shall be entitled - at any time, at Siemens' discretion and without prejudice to Siemens' other rights and remedies under the Contract - to do any or all of the following (including different options in relation to different Defects):

4.2.1 reject in whole or in part any Goods and/or Services supplied under the Contract;

4.2.2 have immediately refunded any payments made in relation to rejected Goods and/or Services and terminate the Contract (without liability and without prejudice to its other rights and remedies) as it relates to those rejected Goods and/or Services;

4.2.3 refuse to accept any subsequent delivery of the Goods and/or performance of the Services which Supplier attempts to make;

4.2.4 require Supplier to make good any Defects by replacing or repairing any rejected Goods, and/or re-performing or otherwise correcting any rejected Services, at Supplier's cost and within such time and at a location required by Siemens;

4.2.5 take, at the cost and liability of Supplier, steps required to make good Defects by replacing or repairing any rejected Goods, and/or re-performing or otherwise correcting any rejected Services (itself and/or by means of alternative suppliers, including by purchasing substitute Goods or Services); and/or

4.2.6 grant a concession to accept a Defect subject to reduction and/or reimbursement from the price as in the opinion of Siemens reflects the costs and damages incurred or likely to be incurred by Siemens, and the benefits (including any reduction in liabilities) accruing or likely to accrue to Supplier, as a result of doing so.

4.3 Siemens' rights under Clause 4.2 are in addition to its other rights and remedies under the Contract (including rights to damages for breach).

4.4 Siemens' rights under Clause 4.2 (only) shall cease at the end of the Warranty Period, except for Defects in title. Unless otherwise stated in the Purchase Order, the "**Warranty Period**" means the period of 36 months from delivery of the Goods and/or completion of the Services. In the case of deliveries of Goods and/or Services to locations which are not Siemens premises, the Warranty Period shall instead begin when the Goods and/or Service is accepted by the end customer (or on the date one year after delivery, if earlier). In the case of latent defects, Siemens shall continue to be entitled to exercise the right provided under Clause 4.2.1 after the Warranty Period expires, but only if it exercises it within 30 days of the date the latent defect becomes apparent to Siemens. In the case of defects for which Applicable Law provides a longer Warranty Period than this Clause 4.4, such longer period shall apply.

4.5 If Supplier repairs, replaces, re-performs or corrects any Goods or Services, the Contract shall apply to such Goods or Services (and all time periods affecting such Goods or Services shall run from the date of repair, replacement, re-performance or correction).

4.6 If Supplier becomes or is aware of any Defect in the Goods and/or Services, it shall promptly notify Siemens in writing, giving full details.

## 5. DELIVERY AND RISK

5.1 Goods and Services shall be delivered on the dates and at the rates and at the places specified in the Contract. Packaging, transport and other cost of delivery shall be included in the price unless otherwise expressly stated in the Purchase Order. If no place or delivery date is specified Goods and/or Services shall be delivered to the registered address of Siemens and delivery shall take place within 14 days of the date of the Purchase Order. Siemens may delay or alter dates and places by giving Supplier reasonable written notice. Early delivery is not permitted except as provided in the Purchase Order. Delivery shall be complete on unloading of the Goods at the delivery location.

5.2 Time of delivery and performance is of the essence of the Contract. If Supplier is aware that it is likely to fail to meet any time of delivery or performance, it shall promptly notify Siemens. For the avoidance of doubt, failure to deliver or perform on time is a Defect for the purposes of Clause 4, as is delivery of incorrect amounts.

5.3 If the Goods are to be delivered or the Services are to be performed by instalments, the Contract will be treated as a single Contract and not separable and failure by Supplier to deliver or perform any one instalment shall entitle Siemens at its option to exercise any of its rights and remedies in respect of the whole Contract.

5.4 Supplier shall ensure that all Goods are marked in accordance with the provisions of the Contract and instructions of Siemens. Goods shall be packed so as to reach the places of delivery undamaged and in good condition. Supplier shall provide in respect of each delivery of Goods a packaging note detailing Siemens' order number, description, code number (if any) and the quantity of Goods delivered. All instructions, warnings, safety data and other data necessary for the use of the Goods shall also be provided.

5.5 If any of the Goods and/or Services contain any hazardous substances or require any special precautions to be taken to ensure safety in handling, transport, storage or use and for the protection of the environment, Supplier shall prior to their delivery provide specific written details of the nature of those substances and the precautions to be taken. Supplier shall ensure that before despatch appropriate instructions and warnings are clearly and prominently marked on the goods or securely attached to them and on any containers into which they are packed.

5.6 Without prejudice to Supplier's other obligations, if transport of the Goods is to be performed by a carrier commissioned by Siemens, Supplier shall submit information and data concerning dangerous goods to the carrier in accordance with Applicable Law. Data and information shall be relevant to all modes of transport to be used if Siemens informs Supplier, or if Supplier is aware, that multimodal transport is to be used.

5.7 The Goods shall remain at the risk of Supplier until delivery to Siemens is complete. Any of Supplier's property brought onto Siemens' premises will be at the risk of Supplier.

5.8 If the Contract requires Siemens to return any packaging material to Supplier, that fact must be stated on any delivery note to Siemens and any such packaging material will be returned to Supplier at Supplier's cost.

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- 5.9 If Goods are delivered to Siemens in excess of the quantities ordered Siemens shall not be liable to pay for the excess, and any excess held by Siemens shall be at Supplier's risk. Any rejected Goods held by Siemens shall be at Supplier's risk. Supplier shall promptly at its own cost collect any excess or rejected Goods.
6. **TITLE**
- 6.1 Title to Goods shall pass to Siemens on delivery. Supplier represents and warrants that (i) it has the right to dispose of the Goods, (ii) it will (at its own cost) take any steps necessary to transfer title to the Goods to Siemens, and (iii) delivery will transfer title to the Goods to Siemens free from all charges, encumbrances and other adverse rights.
- 6.2 Acceptance of delivery and transfer of title shall not prejudice Siemens' rights to reject or otherwise seek remedies under the Contract. Supplier acknowledges that the Goods or Services may be sold on by Siemens (as such or as part of other goods/services) and represents and warrants that Siemens will be able to transfer good title to its customer.
7. **VARIATION OF SERVICES/GOODS**
- 7.1 If at any time during the course of the Contract, Siemens wishes to vary the Services and/or Goods ordered, it shall notify Supplier and Supplier shall within seven (7) days provide a written statement of the amount by which it proposes such variation would increase or decrease (i) the dates, timescales or milestones, and (ii) the charges under the Contract, and such other information as Siemens may reasonably require. All such increases or decreases shall reflect that rates and prices used in the Contract (or where they are not relevant, shall reflect what is fair and reasonable). Supplier shall not refuse any reasonable variation requested by Siemens.
- 7.2 The implementation of any variation to the Services and/or Goods shall be subject to the written agreement of the parties. Supplier shall not undertake any such variations unless specifically instructed to do so by Siemens.
8. **PRICES AND PAYMENT**
- 8.1 All prices shall be as stated in the Contract. The prices are fixed and include delivery and all other charges which shall not be adjusted save as provided for in the Conditions. No variation in the price or extra charges shall be accepted by Siemens. Prices do not include VAT which shall be added by Supplier at the rate and in the manner from time to time prescribed by law.
- 8.2 Supplier shall send to Siemens by means of an e-invoicing process specified by Siemens, a detailed invoice stating the Purchase Order and Goods or Services reference numbers. If requested by Siemens Supplier shall instead submit such invoices by email or post to an address provided by Siemens. Where VAT is chargeable a valid VAT invoice shall be provided. Payment shall be made on the first Payment Date falling at least 60 days after the date of invoice, or after the date of delivery or acceptance of the Goods, or completion of the Services, whichever is the latest. Time for payment shall not be of the essence for the Contract.
- 8.3 Without prejudice to any other right or remedy, Siemens may set off any amount owing at any time by Supplier to Siemens against any amount payable by Siemens to Supplier under the Contract.
- 8.4 If a party fails to make any payment due under the Contract by the due date for payment, then the non-defaulting party shall be entitled to charge interest on the overdue amount at the rate of 5% per annum above the base lending rate from time to time of Barclays Bank plc calculated on a daily basis until payment is made whether before or after any judgement. In relation to payments disputed in good faith, interest under this clause is payable only after the dispute is resolved, on sums found or agreed to be due, from 10 days after the date the dispute is resolved until payment.
9. **RIGHTS OF USE**
- 9.1 Supplier hereby grants Siemens under all applicable IPR and other rights the following non-exclusive, royalty-free (except as expressly stated in the Purchase Order), transferable, worldwide and perpetual rights:
- 9.1.1 to copy and use the Goods and Services, including related documentation and for the avoidance of doubt the Software, to integrate them into other Goods/services and to market and supply them (alone and in other Goods/services) to affiliates, other distributors and customers;
- 9.1.2 to use and sublicense others to copy and use the Software in connection with the installation, launch, testing, operation, maintenance, and enhancement of the Software alone and/or in connection with other products/services;
- 9.1.3 to sublicense the right of use under Clauses 9.1.1 and 9.1.2 to affiliates, other distributors and end customers;
- 9.1.4 to license to affiliates and other distributors the right to sublicense the right of use under Clause 9.1.2 to end customers;
- 9.1.5 to distribute, sell, hire out, lease, make ready for download or make publicly available the Software, e.g. in the context of Application Service Providing or in other contexts, and to copy the Software to the extent required, always provided that the number of licences being used at any one time does not exceed the number of licences purchased;
- 9.1.6 to sublicense the rights under Clause 9.1.5 to affiliates and other distributors.
- 9.2 In addition, Siemens, its affiliates and its other distributors are authorised to allow end customers to transfer Software licences.
- 9.3 Supplier represents and warrants that the Goods and Services do not (except as stated in the Purchase Order) contain "open source software". In the Contract "**open source software**" means any software that is provided royalty-free by the respective licensor to any user on the basis of a license or another agreement with the right to modify and/or to distribute such software, including under the following licenses: the GNU General Public License (GPL), the GNU Lesser GPL (LGPL), the BSD License, the Apache License and the MIT License.
- 9.4 If the Goods and Services delivered by Supplier contain open source software, Supplier must deliver to Siemens in accordance with the Purchase Order (but at the latest with the delivery of the relevant Goods and/or Service):
- 9.4.1 the source code of the relevant open source software, insofar as the applicable open source licence requires the disclosure of this source code;
- 9.4.2 a schedule of all open source files used, indicating the relevant licence and including a copy of the complete text of licence; and
- 9.4.3 a written declaration that through the intended use of the open source software neither the products of Supplier nor the products of Siemens will be subject to a "Copyleft Effect". In the Contract, "**Copyleft Effect**" means that the provisions of the open source license require that certain of Supplier's products, as well as any products derived from these, may only be distributed further in accordance with the terms of the open source licence e.g. only if the source code is disclosed.
- 9.5 Without prejudice to Siemens' other rights and remedies, if the Goods and/or Services contain "open source software" not specified in the Purchase Order and/or Supplier does not comply with Clause 9.4, Siemens may terminate the Contract within 30 days of being notified or becoming aware of such information without cost (and shall be entitled to a full refund of any advance payments made).
- 9.6 Supplier shall supply Siemens with all updates of the Software and this Clause 9 shall apply to all such updates.
- 9.7 Supplier shall provide Siemens with such technical advice, assistance, data and documentation, including source code where necessary, to enable Siemens to maintain the Software if it so wishes.
10. **SIEMENS MATERIAL**
- 10.1 Without prejudice to the generality of Clause 11 (i) Goods marked with any trade mark used or owned by Siemens or its customers shall not be disposed of to any third party without the prior written consent of Siemens, and (ii) Goods manufactured to a design or specification supplied by Siemens or its customers shall not be manufactured for or supplied to any third party without the prior written consent of Siemens.
- 10.2 Issued Material shall be and remain the property of Siemens even if charged for. Supplier shall maintain Issued Material in good order and condition, keep it separate from Supplier's property and identify it as the property of Siemens. Supplier shall not use Issued Material except for the Contract. Risk in Issued Material shall be with Supplier who shall effect comprehensive insurance against all risks of its loss or damage of an amount equal to its replacement cost and with Siemens' interest noted on the policy and with Siemens as loss payee.
- 10.3 If tooling (including patterns, dies, moulds, jigs and fixtures and the like) is manufactured or acquired by Supplier specifically for the purpose of the Contract (or the purchase thereof is a requirement of the Contract), title to it shall pass to Siemens upon its creation or acquisition and thereafter it shall be deemed to be Issued Material..
- 10.4 Upon request, or termination or expiry of the Contract, Supplier shall immediately return (or at Siemens' option dispose of) the Issued Material.
11. **CONFIDENTIALITY**
- 11.1 In the Contract "**Information**" means (i) any information obtained from Siemens (including information within or available from examination of Issued Material), and (ii) the terms of the Contract and information regarding the performance for Siemens of the Contract.
- 11.2 Supplier shall keep all Information confidential and secure and not use it (except to perform the Contract) or make it available to any person except to the extent it is (i) already general knowledge or (ii) lawfully obtained by Supplier from another source without a duty of confidence.
- 11.3 Supplier shall keep confidential and secure all Issued Material and not (i) use it except for the purposes of performing the Contract or (ii) make it available to any third party. Supplier shall not without the prior written consent of Siemens copy or reverse engineer Issued Material.
- 11.4 Supplier shall (i) not allow its employees access to Information or Issued Material except to perform the Contract, and (ii) ensure its employees are aware of the confidentiality of the Information and Issued Material and subject to written terms equivalent in effect to this Clause 11.
- 11.5 Without prejudice to the generality of Clause 20.3, if Siemens agrees to any subcontracting to a third party, Supplier shall procure that such third party is aware of and agrees to terms equivalent in effect to this Clause 11 in writing.
- 11.6 Supplier shall not without Siemens' written consent make known that Supplier supplies or has supplied Goods or Services to Siemens.
12. **INDEMNITY**
- 12.1 Supplier shall fully indemnify Siemens against any claims, liabilities, actions, damages, losses, costs and/or expenses:
- 12.1.1 in respect of any alleged or actual infringement by any of the Goods or Services of any third party's IPR and Siemens may (i) itself defend at Supplier's cost and with Supplier's assistance, or (ii) require Supplier at its own cost to defend or settle all such claims or actions and proceedings brought or threatened to be brought against Siemens;
- 12.1.2 sustained by Siemens or for which Siemens may be liable as a result of negligence or breach by Supplier, its employees, sub-contractors or agents; and/or
- 12.1.3 resulting from death, injury, loss or damage to persons or property caused or contributed to by negligence of Supplier, its employees, sub-contractors or agents.
- 12.2 Without prejudice to Siemens' other rights and remedies, if any Goods or Service is held to infringe third party IPR then at Siemens' request Supplier shall at its own expense replace or amend it promptly so that it is no longer infringing.
13. **FORCE MAJEURE**
- 13.1 Neither party shall be liable to the other for any loss or damage which may be suffered by the other as a result of the performance of its obligations under the Contract being prevented, hindered or delayed by reason of circumstances or events beyond its reasonable control including strikes, lock-outs or other industrial disputes (other than to the extent involving only its workforce), failure of a utility service, act of God, war, civil commotion, malicious damage, epidemic, explosion, fire, flood or earthquake.
- 13.2 If Supplier or Siemens is prevented from performing its obligations under the Contract by a Force Majeure event which continues for more than thirty (30) days, Siemens may at its option terminate the Contract, defer the date of delivery or payment, and/or reduce the volume of Goods or Services ordered without liability to Supplier with immediate effect by giving written notice.
14. **LICENCES**
- 14.1 If the Goods or Services supplied under the Contract require Siemens to have any permit or licence from any governmental or other regulatory authority the Contract shall be deemed conditional upon such permit or licence being granted at the required time. Supplier represents and warrants that it has all necessary permits and licences to allow it to sell the Goods and Services to Siemens.
15. **TERMINATION**
- 15.1 Siemens may terminate this Contract with immediate effect by notice in writing to Supplier if:
- 15.1.1 Supplier is in breach and, in the case of breach capable of remedy, fails to remedy the breach as soon as reasonably possible and in any event within fourteen (14) days of being asked to do so in writing. If a breach cannot be remedied, Siemens may terminate the Contract immediately;
- 15.1.2 Supplier is unable to pay its debts as they become due, ceases or threatens to cease business, or commits an act of insolvency/bankruptcy, or it or a third party takes action for it to go into liquidation unless this is to reconstruct or merge the company, or if an administrator, administrative receiver, receiver or manager is appointed of any part of its business, or if anything analogous to any of those events occurs in any jurisdiction;
- 15.1.3 in the reasonable opinion of Siemens there occurs a material change in the financial position of Supplier which is likely to affect its ability to perform its obligations under the Contract; or
- 15.1.4 there is a change in control of Supplier which in the reasonable opinion of Siemens adversely affects the position, rights or interests of Siemens.
- 15.2 Siemens may terminate this Contract at any time for convenience by notice in writing.
- 15.3 On termination of the Contract, Siemens shall be entitled to have delivered to it all finished Goods manufactured by Supplier, and all work in progress, at the date of termination. If termination is effected pursuant to Clauses 15.1.3, 15.1.4 or 15.2, Siemens shall pay Supplier the price of all such finished Goods and a fair and reasonable sum in respect of all such work in progress. This shall be Supplier's sole and exclusive remedy in the event of termination of the Contract pursuant to those clauses.
- 15.4 Termination of this Contract (however arising) shall not affect or prejudice (i) the continuance in force of rights of use pursuant to Clause 9, or (ii) the rights, liabilities or remedies of the parties accrued prior to termination.

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- 15.5 During the period from the giving of any notice to terminate until the date thirty (30) days after termination or expiry of the Contract, Supplier will cooperate with Siemens to effect a smooth termination and/or transition of the supply of the Goods and/or Services to an alternative supplier (or in-house), if requested by Siemens.
- 15.6 Without prejudice to Siemens' other rights and remedies, Supplier shall within thirty (30) days of termination of the Contract pursuant to Clause 15.1.1 or 15.1.2 refund to Siemens any advance payments made under the Contract and compensate Siemens for the cost of completing (or re-procuring) the Goods and/or Services.
- 16 **CODE OF CONDUCT FOR SIEMENS SUPPLIERS**
- 16.1 Supplier shall comply with the principles and requirements of Siemens' 'Code Of Conduct for Suppliers and Third Party Intermediaries' (available on request), and shall oblige its personnel in writing to comply with the Code of Conduct. Supplier warrants that it shall at all times during the Term comply with the requirements of the Modern Slavery Act 2015.
- 16.2 If requested by Siemens, Supplier shall not more than once a year either – at its option – provide Siemens with (i) a written self-assessment in the form provided by Siemens, or (ii) a written report approved by Siemens describing the actions taken or to be taken by Supplier to assure compliance with the Code of Conduct and the Modern Slavery Act 2015.
- 16.3 Siemens and its authorized agents and representatives and/or a third party appointed by Siemens and reasonably acceptable to Supplier, shall be entitled (but not obliged) to conduct – also at Supplier's premises – inspections in order to verify Supplier's compliance with the Code of Conduct and the Modern Slavery Act 2015. Any inspection may only be conducted upon prior written notice of Siemens, during regular business hours, in accordance with the applicable data protection law and shall neither unreasonably interfere with Supplier's business activities nor violate any of Supplier's confidentiality agreements with third parties. Supplier shall reasonably cooperate in any inspections conducted. Each party shall bear its expenses in connection with such inspection.
- 16.4 In addition to any other rights and remedies Siemens may have, in the event of (i) Supplier's material or repeated failure to comply with the Code of Conduct or (ii) failure to comply with the Modern Slavery Act 2015 or (iii) Supplier's denial of Siemens' right of inspection, after providing Supplier reasonable notice and a reasonable opportunity to remedy, Siemens may terminate this agreement immediately without any liability whatsoever. Material failures include, but are not limited to, incidents of child labour, corruption and bribery, breach of the Modern Slavery Act 2015, and failure to comply with the Code of Conduct's environmental protection requirements. The notice and opportunity to remedy provision shall not apply to violations of requirements and principles regarding child labour as set out in the Code of Conduct, or breach of the Modern Slavery Act, or wilful failures to comply with the Code of Conduct's environmental protection requirements.
- 16.5 Supplier shall provide the necessary organisational instructions and take measures (including in respect of premises security, packaging and transport, business partners, personnel and information) in order to guarantee security in the supply chain according to the requirements of internationally recognized initiatives based on the WCO SAFE Framework of Standards (e.g. AEO, C-TPAT). Supplier shall protect the goods and services provided to Siemens or to third parties designated by Siemens against unauthorised access and manipulation. Supplier shall only use reliable personnel in relation to Goods and Services and shall oblige any sub-suppliers to take equivalent security measures.
- 17 **EXPORT CONTROL AND FOREIGN TRADE DATA REGULATIONS**
- 17.1 Supplier shall comply with all applicable export control, customs and foreign trade regulations ("**Foreign Trade Regulations**"). Supplier shall advise Siemens in writing within two weeks of receipt of any Purchase Order – and in case of any changes without undue delay – any information and data required by Siemens to comply with all Foreign Trade Regulations in case of export and import as well as re-export, including without limitation (i) all applicable export list numbers, including the Export Control Classification Number according to the U.S. Commerce Control List (ECCN), (ii) the statistical commodity code according to the current commodity classification for foreign trade statistics and the HS (Harmonized System) coding, and (iii) the country of origin (non-preferential origin); and – upon request of Siemens - Supplier's declaration of preferential origin (in case of European suppliers) or preferential certificates (in case of non-European suppliers).
- 17.2 Supplier shall be liable for any expenses and/or damage incurred by Siemens due to any breach of Clause 17.1.
- 17.3 Siemens' obligations under the Contract are subject to the proviso that the fulfilment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos or other sanctions.
- 18 **HEALTH AND SAFETY**
- 18.1 Without prejudice to the generality of Clause 3, Supplier shall comply with all Applicable Laws relating to health and safety and use its best endeavours to (a) minimise and if possible eliminate hazards for the health and safety of the personnel employed by Supplier and Supplier's direct or indirect subcontractors for the performance of the Services ("**Personnel**") and (b) to ensure that no persons who are on the work site, including Personnel, Siemens' personnel and visitors, suffer any injury. Supplier shall (i) comply with all Siemens' (and/or the site owner's) procedures, policies and requirements, and revisions thereof, notified to Supplier from time to time and (ii) prior to attending any familiarise itself with the same.
- 18.2 Before the commencement of the Services, Supplier shall provide Siemens a written risk assessment that (a) analyzes all potential hazards for the health and safety of the Personnel arising out of the Services and (b) determines measures to minimise and if possible eliminate such hazards.
- 18.3 Supplier shall ensure that all Personnel (a) are competent to undertake the work by reason of training and/or experience (and the Contractor shall provide documentary evidence of such experience and training, if requested), and (b) take part in any Siemens site-specific safety training and receive the appropriate personal protection equipment before starting work on the site. Supplier 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.
- 18.4 Siemens reserves the right, at its sole discretion, to bar any Personnel from the site and/or to suspend the execution of the Services for security, health and safety reasons, at any time without any liability.
- 18.5 Supplier shall appoint a competent person as its representative for environmental, health and safety ("**Supplier EHS Representative**") and shall ensure that the Supplier EHS Representative takes part in safety discussions arranged by Siemens from time to time.
- 18.6 Supplier shall regularly monitor compliance with statutory and contractual health and safety provisions by performing safety tours on the site of Supplier's works. In due time before a safety tour, Supplier shall invite Siemens to participate. If Supplier 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.
- 18.7 Upon Siemens' request, Supplier shall promptly grant Siemens access to all documents related to health and safety connected with the Services.
- 18.8 If any incident occurs in connection with the Services leading to (a) the death of any person, (b) a major or severe injury to any person, (c) injury to any person involving one or more days of incapacity, or (d) more than three workers being brought to hospital, or if Supplier becomes aware of any event or circumstances in connection with the Services which could have caused any of the events described in (a), (b), (c) or (d), Supplier shall immediately inform Siemens and shall, without undue delay, (i) execute a root cause analysis of the incident, (ii) determine appropriate measures to exclude similar incidents in the future, (iii) define time periods for the measures to be implemented and (iv) provide Siemens with a written report containing sufficient detail on the root cause, the measures determined and the time periods defined. Supplier shall support any additional investigation conducted by Siemens.
- 18.9 If Siemens produces an environmental health and safety document for the site ("**EHS Plan**") Siemens will provide Supplier with a copy of the EHS Plan. Supplier shall confirm receipt thereof in writing and comply with the regulations contained therein. The same shall apply to updates of the EHS Plan which Siemens may produce as it deems necessary. Supplier shall ensure that its direct and indirect subcontractors contracted to perform the Services commit themselves to the EHS Plan and its updates.
- 18.10 In addition to any other rights Siemens may have, in the event of Supplier's material or repeated failure to comply with the statutory or contractual health and safety provisions, including the provisions of this Clause 18 and the provisions of the EHS Plan, after providing Supplier with a reasonable time period within which to remedy the failure, Siemens may terminate this Agreement without any liability whatsoever.
- 19 **ENVIRONMENTAL PROTECTION, DUTIES TO DECLARE, DANGEROUS GOODS, HEALTH AND SAFETY**
- 19.1 If Supplier delivers Goods, substances of which are set out in the so-called "**List of Declarable Substances**" ([www.bomcheck.net/suppliers/restricted-and-declarable-substances-list](http://www.bomcheck.net/suppliers/restricted-and-declarable-substances-list)) applicable at the time of the order or which are subject to statutorily imposed substance restrictions and/or information requirements (e.g. REACH, RoHS), Supplier shall declare such substances in the web database BOMcheck ([www.BOMcheck.net](http://www.BOMcheck.net)) no later than the date of first delivery of the Goods. With respect to statutorily imposed substance restrictions the foregoing shall only apply to laws which are applicable at the registered seat of Supplier or Siemens or at the designated place of delivery requested by Siemens.
- 19.2 If any delivery contains goods which – according to international regulations – are classified as dangerous goods, Supplier will inform Siemens of that in a form agreed upon between Supplier and Siemens, but in all cases in writing no later than the date of order confirmation.
- 19.3 Without prejudice to the generality of Clause 3, Supplier shall provide to Siemens in writing all data, instructions and warnings as are required to comply with Applicable Laws relating to health, safety and the environment in relation to the Goods and/or Services.
20. **MISCELLANEOUS**
- 20.1 Supplier shall maintain suitable insurance against its liabilities under the Contract, and shall provide details and proof to Siemens on request.
- 20.2 Supplier hereby assigns and agrees to assign all IPR in the work carried out under the Contract to Siemens absolutely. Any future-assignable IPR shall vest in Siemens on creation.
- 20.3 Without prior written consent from Siemens, Supplier must not sub-contract or assign the whole or any part of the Contract. If given Siemens' consent, Supplier (i) is not relieved of any of its obligations under the Contract and (ii) shall procure that any permitted sub-contractor complies with all relevant provisions of the Contract. Actions and omissions by a sub-contractor shall be treated as if committed or omitted by Supplier. Siemens may refuse, or attach conditions to giving, its consent. Siemens may (i) assign the Contract or any part of it to, and/or (ii) perform any of its obligations and/or exercise any of its rights by means of, any third party (including any affiliate).
- 20.4 If Siemens delays, forgets or chooses not to enforce its rights under the Contract it shall not affect its right to do so at a later date.
- 20.5 Supplier shall at Siemens' request execute any documents and take any reasonable steps needed to confirm, or permit the exercise by Siemens of, the rights granted to Siemens in the Contract.
- 20.6 All notices must be in writing and sent to the address or fax number set out in the Contract. They may be delivered by hand, or by first class post or by facsimile and shall be deemed to have been served: (i) if by hand, at time of delivery, (iii) if by first class post, two working days after posting, and (iii) if by facsimile, on the date printed on the facsimile advice note produced by the sender's machine.
- 20.7 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 20.8 The Parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 20.9 The Contract and any disputes or claims arising out of or in connection with it (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, English law. The courts of England shall have exclusive jurisdiction to resolve any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract.