

General Terms and Conditions of Siemens, s.r.o.

1. General

- 1.1 The scope, quantity, quality, functionality and technical specifications of any goods, equipment, documentation, software, work or services to be provided by Siemens (collectively referred to as "**Supplies**") are exclusively defined as the case may be either in the order confirmation of Siemens or the Contract signed by the Customer and Siemens.
- 1.2 The offer letter from Siemens together with these terms and conditions and those other documents expressly identified in the offer letter as forming part of the contract shall together constitute the entire agreement between the parties (the "**Contract**"). Any terms and conditions of the Customer shall apply only where expressly accepted in writing by Siemens.
- 1.3 References in the Contract to "**Siemens**" are to the Siemens legal entity which signs the Contract, unless the context otherwise requires. References to the "**Customer**" are to the legal entity to whom the offer letter is addressed.
- 1.4 The Customer explicitly confirms that he has read, understood and agreed with the Article 8.2, 11.6 and 16.5 of these terms and conditions.

2. Right of Use

- 2.1 Except as expressly otherwise agreed in this Contract, as between the parties all intellectual and industrial property rights in the Supplies, in all documents provided by Siemens in connection with this Contract (the "**Documents**") and in all software, hardware, knowhow ("**IPR**") and other things provided with or as part of the Supplies and the Documents shall be the exclusive property of and vest in Siemens. The Customer shall not be entitled to reverse engineer or to reproduce (or have reverse engineered, decompiled, or reproduced) the Supplies or goods delivered in connection with such Services or parts thereof unless required by applicable law to do so or Clause 2.3 applies.
- 2.2 The Customer may use the Documents unmodified and to the extent necessary for operation and routine maintenance of the Supplies by the Customer's own personnel, unless explicitly agreed otherwise in writing by Siemens.
- 2.3 If the Supplies include Siemens software, such software is licensed under the licence terms contained in the software documentation, the software itself or in the attached licence terms (in each case the "**applicable license conditions**"), which shall prevail over this Clause 2. The software is issued in object code without source codes. The licence only grants the non-exclusive right to use the software as described in the applicable licence conditions or, if there are no applicable license terms, for the purpose of operation and routine maintenance of the Supplies.
- 2.4 The Supplies may include third party software. Insofar as specific licence terms of the third party licensor apply, Siemens will provide such licence terms together with the Supplies. The Customer shall comply with such third party licence terms.
- 2.5 Insofar as the software contains Open Source Software ("**OSS**"), Siemens will provide the applicable OSS licence terms together with the Supplies. The OSS licence terms shall prevail over this Contract. Details regarding any third-party software and OSS contained in the Supplies are available in the software documentation (e.g. README_OSS).
- 2.6 The rights granted in Clause 2 shall be transferable to a third party only together with the transfer of ownership of all of the Supplies to that third party.
- 2.7 Without prejudice to the Customer's intellectual property rights and subject to compliance with applicable law, Siemens and its Affiliates may for its own business purposes collect, use, modify, and copy any data received under this Contract. Any legal obligations regarding personal data shall remain unaffected.

3. Prices and Terms of Payment

- 3.1 Unless agreed otherwise in writing, prices exclude packing, freight, insurance and any other additional charges (such as storage, inspections by third parties). The price payable by the Customer under this Contract shall be referred to in this Contract as the “**Contract Price**”.
- 3.2 The Contract Price is exclusive of any indirect taxes (such as property, license, sales, use, value added or similar tax) and/or any duties, customs or public charges related to the Contract. The Customer agrees to pay to or reimburse Siemens for any taxes, customs, duties or other public charges levied in relation to the Supplies. All payments shall be made to Siemens' bank account without deduction (e.g. deduction of withholding tax) within 30 days after issuance of the invoice. If the Customer is required to make a deduction by law, the sum payable shall be increased so that Siemens receives a net amount equal to the amount it would have received without such deduction. The Customer shall provide to Siemens tax receipts in connection with the payments in due course.
- 3.3 Without prejudice to any other rights it may have, Siemens may charge interest at 9 percentage points above the current base lending rate of the Czech National Bank on any overdue payments.
- 3.4 Each party must pay all sums that it owes to the other party under this Contract free and clear without any set-off, counterclaim, deduction or withholding of any kind, save as agreed otherwise in writing or as may be required by law.

4. Delivery Times and Delay

- 4.1 Any agreed dates in respect of the Supplies or any part of them shall be extended by a reasonable period of time if and to the extent that Siemens is delayed or impeded in the performance of its obligations by any third party or by the failure of the Customer to perform its obligations. This includes without limitation the delivery of required documents (such as necessary permits and approvals), timely performance of any work to be undertaken by the Customer or any third party appointed by the Customer, and compliance with the terms of payment.
- 4.2 Siemens may, if it is reasonable to do so, deliver the Works in stages or instalments and shall be entitled to invoice for the Works on a corresponding basis.
- 4.3 If Siemens does not meet the agreed final delivery date solely due to the fault of Siemens, the Customer shall be entitled to contractual penalty amounting to 0.5% of the price of the delayed part of the Supplies per each completed week of delay, for which the Customer suffered loss as a result of such delay. Contractual penalty payable in case of delay shall be limited to 5% of the price of the delayed part of the Supplies, but in any case shall not exceed 5% of the total Contract Price.
- 4.4 Any rights and remedies of the Customer in case of delay other than those expressly stipulated in this Clause 4 and in Clause 15.2 a) below shall be excluded, to the extent permissible by law.

5. Transfer of Risk and Title

- 5.1 Risk of damage to or loss of the Supplies shall pass to the Customer upon delivery.
- 5.2 The Supplies shall be deemed delivered if and when the Customer fails to take over the delivery without cause. In such case, the Supplies can be stored and insured at the risk and expense of the Customer, any payment obligations of the Customer shall become due, and all other consequences of the delivery shall apply accordingly (the Customer shall be obliged to perform its obligations according to the contract as if the Supplies have been delivered). The same consequences shall apply on the scheduled date of delivery if the dispatch is postponed for reasons attributable to the Customer.
- 5.3 Title in any part of the Supplies shall remain with Siemens until Siemens has received full payment for that part of the Supplies.

6. Force Majeure

- 6.1 A **“Force Majeure Event”** means any event which is beyond the reasonable control of a party or its subcontractors, which could not have been prevented by good industry practice and which results in a party, its Affiliates or any of its sub-contractors or sub-suppliers (the **“Affected Party”**) being unable to perform or being delayed in performing in whole or in part its obligations under this Contract. Force Majeure Events include, among others, acts of war, riot, civil commotion, terrorism, natural disaster, epidemic, strikes, lock-outs, attacks on Siemens’ IT systems (such as virus attacks, hacker attacks), non-issuance of licences, permits or approvals, or any other act or failure to act by any public authority, or embargos or any other trade sanctions imposed by the European Union (EU) or the United States of America (U.S.) or any public authority within EU or U.S. territory or by the United Nations which, upon sole discretion of Siemens, may expose Siemens or any of its Affiliates to sanctions, penalties, loss of privileges or other acts or omissions of public authorities detrimental to Siemens or any of its Affiliates, or any subcontractor or sub-supplier rejecting delivery due to reasons like those as stated herein, acts or omissions of public.
- 6.2 If a Force Majeure Event occurs, the Affected Party will be deemed not to be in breach of its obligations under the Contract for so long as and to the extent necessary to overcome the effects of the Force Majeure Event.
- 6.3 The Affected Party shall notify the other party as soon as reasonably practicable of the Force Majeure Event and of its affected obligations.
- 6.4 If one or more Force Majeure Events and their effect lasts for a period of 180 days in aggregate either party may terminate the Contract by giving to the other a written notice of termination with regard to the part of the Supplies not yet delivered. With regard to the part of the Supplies not delivered, Siemens shall be entitled to reimbursement from the Customer of its unavoidable costs related to such termination.

7. Obligations of the Customer

- 7.1 The Customer shall apply for and obtain all necessary licences, permits and approvals required for the commissioning, acceptance, and use of the Supplies.
- 7.2 If Supplies are delayed due to circumstances for which Siemens is not responsible, the Customer shall pay Siemens all additional costs arising from such delay.

8. Changes

- 8.1. If applicable laws, rules and regulations, engineering standards and codes of practice, and decisions or guidance issued by courts or public authorities are amended or added to after the date of Contract signature, Siemens shall be entitled to an adjustment of the Contract, including inter alia an adjustment of the Contract Price to reflect any additional costs to be incurred by Siemens, the time schedules and scope of Supplies, as necessary in order to compensate for any adverse effects or additional requirements deriving from such changes.
- 8.2. The Customer shall assume the risk of changes of circumstances according to Sections 1764 to 1766 of the Civil Code.

9. Defects Liability

- 9.1 In this Contract, and subject to Clause 9.2, a defect shall mean any non-conformity of the Supplies with the express terms of this Contract resulting from circumstances existing in the Supplies at the time of the transfer of risk to the Customer (**“Defects”**).
- 9.2 In particular, the following shall not be Defects:
- a) normal wear and tear, non-conformity resulting from excessive strain,
 - b) non-conformity resulting from faulty or negligent handling; non-compliance with instructions or recommendations in operation or maintenance manuals and other documents;

- c) installation, erection, modification, commissioning, or pre-commissioning, in each case not carried out by Siemens,
- d) non-reproducible software errors,
- e) defects which do not significantly impair the use of the respective Supplies.

9.3 The Customer shall immediately inspect the Supplies upon delivery and shall notify Siemens in writing of any Defects without undue delay. The Customer's claims in respect of defects shall be excluded for any apparent defects if the Customer has failed to do so.

Upon such written notification, Siemens shall, at its option, remedy a Defect by repair, replacement, or re-performance. Siemens shall be given a reasonable period of time and opportunity to remedy the Defect. For this purpose, the Customer shall grant Siemens working access to the non-conforming Supplies, shall undertake any necessary dis-assembly and re-assembly, and shall provide access to operation and maintenance data, all at no charge to Siemens. Upon Siemens' request, the Customer shall ensure that the title to the replaced parts/items shall pass to Siemens.

9.4 Unless otherwise agreed, the defects liability period for the Supplies is 12 months. It starts at the date of transfer of risk.

For replaced or repaired parts of the Supplies, the defects liability period is 6 months from the date of replacement or repair, if the original defects liability period for the Supplies expires earlier. In any event, the defects liability period shall end no later than 24 months from the beginning of the original defects liability period.

9.5 If software is defective, Siemens shall only be obliged to provide the Customer with an updated version of the software in which the Defect has been remedied when such updated version is reasonably available from Siemens or, if Siemens is only the licensee, from Siemens' licensor. If the software has been modified or individually developed by Siemens, Siemens shall in addition provide the Customer with a workaround or other interim corrective solution until the provision of an updated version of the software, if such workaround or interim solution is feasible at reasonable expense and if otherwise the Customer's business operations would be substantially impeded.

9.6 If Siemens carries out remedial work and it is ultimately not established that there was a Defect, the Customer shall pay Siemens for such remedial work including error diagnosis.

9.7 Any other liability of Siemens and rights and remedies of the Customer in case of defects of the Supplies, other than those expressly stipulated in this Clause 9 or, in case Siemens failed at least three times in remedying the defect, in Clause 15.2 b) shall be excluded. All warranties, representations, conditions, and all other terms of any kind whatsoever implied by law are, to the fullest extent permitted by applicable law, excluded from this Contract.

10. Intellectual Property Rights

10.1 If a third party asserts legitimate claims against the Customer that the Works infringe an IPR owned by such third party, then subject to the following provisions of this Clause 10, Siemens shall, at its option and expense, either

- a) obtain a right to use the relevant IPR in connection with the Supplies;
- b) modify the Supplies so as not to infringe the relevant IPR; or
- c) replace the infringing part of the Supplies.

If, in the opinion of Siemens, none of the foregoing is reasonably possible, Siemens may take back the relevant part of the Supplies and reimburse the price for such part.

10.2 Siemens' obligations in Clause 10.1 are subject to the following conditions:

- a) The Customer has immediately notified Siemens in writing of the third party's claim and furnished Siemens with a copy of each communication, notice or other action relating to the alleged infringement,
- b) the Customer does not acknowledge an infringement and provides Siemens with the authority, information and assistance reasonably required by Siemens to defend or settle such claim, and

- c) Siemens is given sole control of the defence (including the right to select counsel), and the sole right to settle such claim.

If the Customer ceases to use the Supplies or any relevant portion thereof, it shall notify the third party in writing that its cessation of use is not an admission of IPR infringement.

- 10.3 Any claims of the Customer shall be excluded if the Customer (including its agents, employees or contractors) is responsible for the IPR infringement, which shall include without limitation if the IPR infringement was caused by specific demands of the Customer, by use of the Supplies for a purpose or in a manner not foreseeable by Siemens, by a modification of the Supplies by the Customer or by use of the Supplies in connection with other equipment.
- 10.4 This Clause 10 sets forth Siemens' sole and exclusive liability for infringement of third party IPRs. Any other or further rights and remedies of the Customer shall be excluded.

11. Liability

- 11.1 Unless explicitly stipulated in this Contract, this Clause 11 shall exclusively govern the liability of Siemens for damages, costs and expenditures, regardless of the legal theory upon which it is based, including, but not limited to liability in Contract, in tort (including negligence), misrepresentation, indemnity, under warranty or otherwise.
- 11.2 Siemens shall be liable for bodily injuries and for intentional acts or omissions pursuant to the applicable law.
- 11.3 Siemens shall in no event be liable, whether pursuant to any indemnity or in contract, tort (including negligence and statutory duty) or otherwise for loss of profit or revenue, loss of production, interruption of operations or loss of use, cost of capital, loss of interest, loss of information and/or data, for claims arising from Customer's contracts with third parties, or for any indirect or consequential damage.
- 11.4 Siemens' total liability, whether pursuant to any indemnity or in contract, tort (including negligence and breach of statutory duty) or otherwise arising by reason of or in connection with the Contract shall not exceed 20% of the Contract Price per event and shall, under any circumstances, be limited in aggregate to 100% of the Contract Price. For the avoidance of doubt, the same shall apply to damage or loss caused to the Supplies by defects or remedial work carried out by Siemens after delivery to or acceptance of the Supplies by Customer, as the case may be.

Under no circumstances shall Siemens' total aggregate liability towards Customer arising out of or in connection with this Contract exceed the Contract Price or the amount of € 1,000,000, whichever is lower.

- 11.5 Any limitations of liability set forth in this Contract shall also apply for the benefit of Siemens' subcontractors, employees, agents or any other person acting for Siemens.
- 11.6 If the performance under the contract is to be provided for the fulfilment of the Customer for the benefit of a third party and the Customer is not to be the end user or sole user of the supply or its part, the Customer is obliged to ensure that his liability to this third person is limited to the same scope as the scope of liability between Siemens and the Customer is limited under these terms and conditions. Should the Customer and third party for which the fulfilment under the contract is provided fail to appropriately agree such limitation of liability, the Customer will be obliged to compensate Siemens for any damages in an amount equal to the difference between the compensation of damages really paid by the Siemens to a third party and the damages which would otherwise be paid to the third party if the above mentioned limitation of liability was applicable.
- 11.7 Any and all liability of Siemens under this Contract shall cease with the expiry of the defects liability period of the Supplies, unless it contradicts mandatory provision of the law.
- 11.8 Any rights, and remedies of the Customer against Siemens that are not expressly stipulated in the Contract shall be excluded.

12. Assignment

- 12.1 The Customer may not assign this Contract or any part thereof without Siemens' prior written approval.
- 12.2 Siemens may assign the Contract or any part of it to an affiliated company ("**Affiliate**"), being any legal entity ("**Company**") which directly or indirectly is controlled by Siemens, controls Siemens or is controlled by a Company which directly or indirectly controls Siemens.
- 12.3 Siemens shall further be entitled to assign the whole Contract or a part of it to any third party, in the event of a sale or other transfer of the business (enterprise as going concern) or a part of the business (part of enterprise as going concern) of Siemens to a third party.

13. Confidentiality

- 13.1 The parties shall use any documents, know-how, data or other information provided by the other party ("**Information**") exclusively for the purpose of this Contract and keep the same confidential subject to the following. The parties may disclose Information to employees of the receiving party and to third parties who reasonably need to know such Information for the purpose of the Contract provided such employees and third parties are bound by equivalent confidentiality obligations. The party disclosing Information shall be held liable for a breach of such obligations by its employees or a third party.
- 13.2 This confidentiality obligation shall not apply to Information which
- a) is or becomes part of the public domain other than by fault of the receiving party;
 - b) is disclosed to the receiving party in good faith by a third party who is entitled to make such disclosure;
 - c) is developed independently by the receiving party without reliance on Information;
 - d) was known to the receiving party prior to its disclosure by the other party; or
 - e) is required to be disclosed by law (subject to the receiving party's obligation to notify the disclosing party in a timely manner of such requirement).
- 13.3 This confidentiality obligation shall survive the expiration or termination of this Contract.

14. Suspension

- 14.1 Siemens may suspend performance of its obligations under the Contract, if (i) the Customer is in delay with any payment or in providing any payment security required under this Contract for more than 30 days, (ii) the Customer fails to perform those of its obligations necessary for Siemens to complete or deliver the Supplies, or (iii) the Customer otherwise materially breaches the Contract or (iv) the Customer is in default against Siemens with any payment based on the other contractual relationship concluded by Siemens and the Customer (during the period of such default, Siemens is not in default with Supplies in question and the agreed time is proportionally extended by the time corresponding at least to the aforementioned default of the Customer).
- 14.2 If Siemens suspends the Contract in accordance with Clause 14.1 or in the event the Customer suspends the Contract without the express written agreement with Siemens, the Customer shall become immediately liable to pay Siemens for all parts of the Supplies already provided. The Customer shall further reimburse Siemens all reasonable additional costs and expenses incurred as a result of such suspension (e.g. payments to subcontractors, cost of waiting time, demobilization and remobilization, etc.). Any contractual dates shall be extended for a reasonable period to overcome the effects of the suspension.

15. Termination

- 15.1 Either party may terminate this Contract with immediate effect by written notice, if the other party becomes bankrupt or insolvent, has a receiving order made against it or compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors or goes into liquidation.

- 15.2 Save as provided under Clause 6.4 and Clause 15.1, the Customer may terminate the Contract only in the circumstances set out below and in each case upon 14 days written notice to Siemens:
- a) in the event of delay, if the maximum contractual penalty under Clause 5.4 is payable, a reasonable additional period of time for delivery has been granted to Siemens and has expired, and within that time Siemens not provided a commitment to pay further contractual penalty exceeding the before-mentioned maximum contractual penalty in respect of the continuing period of delay; or
 - b) in the event Siemens has materially breached the Contract and has not remedied the breach within a reasonable period after receiving written notification of the breach from the Customer.
- 15.3 Any termination by the Customer shall not affect those parts of the Supplies already delivered or performed in accordance with the Contract prior to the termination. After termination in accordance with Clause 15.2, the Customer shall remain liable to pay Siemens for all parts of the Supplies already delivered prior to termination. The Customer shall be entitled to compensation for the reasonable costs incurred in excess of the Contract Price if it had the defective Supplies delivered/remedied by a third party. For the avoidance of doubt, Clause 11 shall apply in case of termination. The right to rescind the Contract is excluded.
- 15.4 Notwithstanding any other rights it may have under this Contract, Siemens may terminate the Contract
- a) if the Customer comes under the direct or indirect control of any competitor of Siemens, or
 - b) if the Customer materially breached the Contract and has not remedied the breach within a reasonable period after a notification by Siemens or is in delay in making any payment or in providing any payment security required under this Contract for more than 60 days;
 - c) if the Contract has been suspended for more than 60 days.
- 15.5 In the event of termination by Siemens, Siemens shall be entitled to recover from the Customer (i) the Contract Price less any saved or avoided expenditure and (ii) any additional cost and expenses incurred by Siemens due to such termination.

16. Dispute Resolution, Applicable Law

- 16.1 The Contract and any dispute or claim arising out of, or in connection with, it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the substantive laws of the Czech Republic. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 16.2 All disputes arising out of or in connection with the Contract including any question regarding the termination or any subsequent amendment of the Contract shall be finally settled in accordance with the Rules of Arbitration of the International Chamber of Commerce (“**ICC**”). If the value of the total matter in dispute, including the value of any counterclaims, is less than € 1,000,000, the tribunal shall consist of one arbitrator and if the value of the total matter in dispute is € 1,000,000 or more the tribunal shall consist of three arbitrators. 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 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.
- 16.3 The seat of arbitration shall be Prague, the Czech Republic. The language to be used in the arbitration proceeding shall be Czech. Any order for the production or disclosure of documents shall be limited to the documents on which each party specifically relies in its submission(s).
- 16.4 Upon request of a party, the arbitral tribunal shall order any claiming or counterclaiming party to provide security for the legal and other costs of any other party related to that claim or counterclaim, by way of bank guarantee or in any other manner and upon such terms as the arbitral tribunal considers appropriate.
- 16.5 Section 558 (2), Section 1726, Section 1728, Section 1729, Section 1740 (3), Section 1744, Section 1757 (2) and (3), Section 1765, Section 1798 to 1800, Section 1950, Section 1995 (2) and Section 2630 of the Civil Code shall not apply. The parties expressly confirm that this contract shall be concluded by them as entrepreneurs within their business. Neither of the parties has a weaker position towards the other party.

17. Export Regulations

- 17.1 If Customer transfers Supplies (hardware and/ or software and/ or technology as well as corresponding documentation and/ or works and services, regardless of the mode of provision, and/ or including all kinds of technical support) provided by Siemens to a third party worldwide, Customer shall comply with all applicable national and international (re-) export control regulations. In any event Customer shall comply with the (re-) export control regulations of the Czech Republic, of the European Union and of the United States of America.
- 17.2 If required to conduct export control checks, Customer, upon request by Siemens, shall promptly provide Siemens with all information pertaining to a particular end customer, destination and intended use of the Supplies provided by Siemens, as well as any export control restrictions existing.
- 17.3 The Customer shall indemnify and hold harmless Siemens from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any non-compliance with export control regulations by the Customer, and the Customer shall compensate Siemens for all losses and expenses resulting therefrom, unless such non-compliance was not caused by the fault of the Customer. This provision does not imply a change in the statutory burden of proof.

18. Miscellaneous

- 18.1 Siemens shall not be obliged to fulfill this Contract if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions. Siemens shall further not be obliged to fulfill this Contract if Siemens or any of its Affiliates would be exposed to, or adversely affected by, detrimental measures, penalties, loss of privileges or any other acts or omissions of government, governmental or other public authorities including any entities acting on their behalf (or threats thereof), or any subcontractor or sub-supplier rejects delivery due to the same reasons.
- 18.2 If any provision of this Contract is prohibited or declared invalid or unenforceable by any court or tribunal of competent jurisdiction, this shall not affect the validity or enforceability of any other provision. The parties shall use their reasonable efforts to substitute such provision by a legal, valid or enforceable one with the same or a similar result.
- 18.3 Any amendments, changes or additions to this Contract must be made in writing in the form of a written agreement signed by authorised representatives of both parties.
- 18.4 No delay or omission by either party in exercising any right, power or remedy provided by law or under this Contract shall affect, impair or operate as a waiver of such right, power or remedy.
- 18.5 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into this Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Contract.
- 18.6 This Contract is drawn up in the Czech and English language. The Czech language text shall in any event prevail.